NATURAL RESOURCES CODE
TITLE 1. GENERAL PROVISIONS
CHAPTER 1. GENERAL PROVISIONS

Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent natural resources law more accessible and understandable by:

(1) rearranging the statutes into a more logical order;

(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 1.002. CONSTRUCTION OF CODE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 479, Sec. 71, eff. Sept. 1, 1985.

TITLE 2. PUBLIC DOMAIN
SUBTITLE A. GENERAL PROVISIONS
CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO THE PUBLIC DOMAIN
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "State" means the State of Texas.

(2) "Land office" means the General Land Office.

(3) "Commissioner" means the Commissioner of the General Land Office.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. TERRITORY AND BOUNDARIES OF THE STATE

Sec. 11.011. VACANT AND UNAPPROPRIATED LAND. So that the law relating to the public domain may be brought together, the following extract is taken from the joint resolutions of the Congress of the United States relating to the annexation of Texas to the United States, which was approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct. . . ."

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.0111. LOCATION OF COASTAL BOUNDARIES. (a) The commissioner shall:

(1) have the area between the coastline of the Gulf of Mexico and the Three Marine League line compiled and platted; and

(2) locate and set the boundary lines between the coastal counties from the coastline to the Three Marine League line.

(b) The commissioner shall locate and set the boundary lines between the counties from the coastline to the Three Marine League line in accordance with established engineering practice.

(c) The legal description of the boundary lines set between the counties from the coastline to the continental shelf shall be filed and recorded in the office of the county clerk of the affected county.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 30, eff. June 20, 2003.

Sec. 11.012. GULFWARD BOUNDARY OF TEXAS. (a) The gulfward boundary of the State of Texas is the boundary determined in and pursuant to the decision of the United States Supreme Court in Texas v. Louisiana, 426 U.S. 465 (1976).

(b) The State of Texas has full sovereignty over the water, the beds and shores, and the arms of the Gulf of Mexico within its boundaries as provided in Subsection (a) of this section, subject only to the right of the United States to regulate foreign and interstate commerce under Article I, Section 8 of the United States Constitution, and the power of the United States over admiralty and maritime jurisdiction under Article III, Section 2 of the United States Constitution.

(c) The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries provided in this section, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide.

(d) None of the provisions of this section may be construed to relinquish any dominion, sovereignty, territory, property, or rights of the State of Texas previously held by the state.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.013. GULFWARD BOUNDARIES OF COUNTIES, CITIES, TOWNS, OR VILLAGES. (a) The gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as determined by the United States Supreme Court.

(b) The area in the extended boundaries of the counties as provided in this section becomes a part of the public free school land and is subject to the constitutional and statutory provisions of this state pertaining to the use, distribution, sale, and lease of public free school land in this state.

(c) The gulfward boundaries of any city, town, or village created and operating under the general laws of the State of Texas shall not be established or extended by incorporation or annexation more than 5,280 feet gulfward beyond the coastline. The governing

body of such a city, town, or village may, by ordinance, extend the municipal boundaries up to 5,280 feet gulfward. Any inclusion of territory in any such city, town, or village more than 5,280 feet gulfward beyond the coastline is void. The term "coastline" as used in this subsection means the line of mean low tide along that portion of the coast which is in direct contact with the open Gulf of Mexico. The term "city, town, or village created and operating under the general laws of the State of Texas" shall not include any city operating under a home-rule charter.

If any such general-law city, town, or village has heretofore been established by incorporation or attempted incorporation more than 5,280 feet gulfward beyond the coastline, the corporate existence of such general-law city, town, or village is in all things validated, ratified, approved, and confirmed.

The boundaries of such general-law city, town, or village, including the gulfward boundaries to the extent of 5,280 feet gulfward beyond the coastline, are in all things validated, ratified, approved, and confirmed and shall not be held invalid by reason of the inclusion of more territory than is expressly authorized in Article 971, Revised Civil Statutes of Texas, 1925, as amended, or by reason of the inclusion of territory other than that which is intended to be used for strictly town or city purposes as required by Section 7.002, Local Government Code or by reason of not constituting a city, town, or village.

Neither this Act nor the general laws nor the special laws of the state shall have the effect of validating, ratifying, approving, or confirming the inclusion of territory in any such general-law city, town, or village more than 5,280 feet gulfward beyond the coastline.

If for any reason it should be determined by any court of competent jurisdiction that any such general-law city, town, or village has heretofore been incorporated in violation of the laws of the state in effect as of the date of such incorporation or is invalid, the corporate boundaries of any such general-law city, town, or village shall be revised and reformed to exclude all territory more than 5,280 feet gulfward of the coastline.

Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2165, ch. 828, Sec. 1, eff. June 14, 1979; Acts 1987, 70th Leg., ch. 149, Sec. 24, eff.

Sept. 1, 1987.

Sec. 11.0131. JURISDICTION OF HOME-RULE CITIES OVER SUBMERGED LANDS. (a) In this section:

(1) "Coastline" has the meaning assigned by Section 11.013(c) of this code.

(2) "State-owned submerged lands" means the state-owned submerged lands described by Section 11.012 of this code.

(b) The boundary of a home-rule city may not extend into the gulf outside of an area that is enclosed by:

(1) for home-rule cities which have not prior to May 1, 1983, annexed gulfward from the coastline:

(A) drawing a straight line connecting the two most remote points on the part of the coastline located in the city on June 1, 1983, the distance to be measured along the coastline;

(B) drawing straight lines that extend gulfward for one marine league from each of the two ends of the line drawn under Paragraph (A) of Subdivision (1) of this subsection and that are perpendicular to the line drawn under Paragraph (A); and

(C) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (B) of Subdivision (1) of this subsection; or

(2) for home-rule cities which have, prior to May 1, 1983, annexed no farther than one marine league gulfward from the coastline:

(A) drawing a straight line that connects the two most remote points on the part of the coastline located in the city on June 1, 1983, and that extends through those two points as far as necessary to draw the lines described by Paragraph (B) of Subdivision (2) of this subsection;

(B) drawing two straight lines that extend gulfward for one marine league, that are perpendicular to the line drawn under Paragraph (A) of Subdivision (2) of this subsection, and that each extend through one of the two most remote points from the coastline on the boundary lines extending gulfward from the coastline;

(C) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (B) of Subdivision (2) of this subsection; or

(3) for home-rule cities which have, prior to May 1, 1983,

annexed farther than one marine league gulfward from the coastline:

(A) drawing lines following the two current boundary lines extending gulfward from the coastline for a distance of one marine league;

(B) drawing a straight line connecting the two gulfward ends of the lines drawn under Paragraph (A) of Subdivision (3) of this subsection.

(c) A contract or agreement by which a home-rule city purports to pledge, directly or indirectly, taxes or other revenue from or attributable to state-owned submerged lands or other lands located outside the area described by Subsection (b) of this section does not create an enforceable right to prevent the reformation of the city's boundary under Subsection (d) of this section.

(d) The boundary of a home-rule city is void to the extent that it violates Subsection (b) of this section, and the boundary is reformed on the effective date of this Act to exclude the territory situated outside the area described by Subsection (b) of this section.

(e) A home-rule city may create industrial districts in the area that is outside the city limits and that is located in an area formed in the manner prescribed by Subsection (b) of this section except that the lines drawn under Paragraph (B) of Subdivision (1), Paragraph (B) of Subdivision (2) or Paragraph (A) of Subdivision (3) of Subsection (b) may be extended for no more than five statute miles instead of one marine league. The governing body of such city shall have the right, power, and authority to designate the area described as an industrial district, as the term is customarily used, and to treat such area from time to time as such governing body may deem to be in the best interest of the city. Included in such rights and powers of the governing body of any city is the right and power to enter into contracts or agreements with the owner(s) or lessee(s) of land in such industrial district upon such terms and considerations as the parties might deem appropriate. The city shall have no authority to regulate oil and gas exploration, production, and transportation operations in an industrial district established pursuant to this Act, but in consideration of such relinquishment and the relinquishment of other rights under Section 42.044, Local Government Code, the city is expressly authorized to require payments of a property owner or lessee(s) in such industrial district in an amount not to exceed 35 percent of the revenue that would be produced

if the city imposed a property tax in the industrial district. Nothing herein shall prohibit a city and property owner or lessee(s) from agreement by contract for payments in a lesser amount.

Added by Acts 1981, 67th Leg., p. 3057, ch. 803, Sec. 1, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 3134, ch. 538, Sec. 1, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 149, Sec. 38, eff. Sept. 1, 1987.

Sec. 11.014. LAND ACQUIRED FROM OKLAHOMA. (a) Land acquired by the state in Oklahoma v. Texas, 272 U.S. 21 (1926) and subsequent orders of the United States Supreme Court relating to that case, is incorporated into the counties which are adjacent to the land, and the north and south lines of the adjacent counties, Lipscomb, Hemphill, Wheeler, Collingsworth, and Childress, are extended east to the 100th degree of west longitude as it is fixed in the final judgment.

(b) The land acquired from Oklahoma shall become a part of the respective counties as though it were originally included in each county for governmental purposes and shall be assessed for taxes and have taxes collected under the provisions of existing law.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.015. EXTENSION OF TEXAS-NEW MEXICO BOUNDARY. (a) The boundary lines of all counties in the Texas Panhandle that border on the New Mexico boundary line are extended by extending the north and south lines of certain counties west to the Texas-New Mexico line, which was established by the survey of John H. Clark in 1859 and later retraced to completion on September 26, 1911, by the Boundary Commission composed of Francis M. Cockrell and Sam R. Scott, under authority of S.J.R. No. 124, of the 61st Congress, Third Session.

(b) The boundary line is referred to as the 103rd Meridian and is described as follows:

> Beginning at the point where the one hundred and third degree of longitude west from Greenwich intersects the parallel of thirty-six degrees and thirty Minutes North latitude, as determined and fixed by John H. Clark, the

Commissioner on the part of the United States in the years eighteen hundred and fifty-nine and eighteen hundred and sixty; thence South with the line run by said Clark for the said one hundred and third degree of longitude to the Thirty-second parallel of North latitude to the point marked by said Clark as the Southeast corner of New Mexico; and thence West with the thirty-second degree of North latitude as determined by said Clark to the Rio Grande.

(c) Copies of the deeds certified by the custodian of records in each of the counties in New Mexico in which the land is located and other instruments of title are admissible as evidence in suits filed in this state to the same extent as the original deeds or certified copies of them.

(d) The county clerk of each of the counties in Texas in which the land is now located may file the certified copies of deeds and other instruments affecting title in the same manner as the original deeds could have been filed.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.016. LAND ACQUIRED FROM MEXICO IN 1933. (a) The State of Texas recognizes the provisions of 54 Stat. 21 (1940) and accepts as part of its territory and assumes civil and criminal jurisdiction over all of certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the United States under a convention between the United States of America and the United Mexican States signed February 1, 1933.

(b) The parcels and tracts of land acquired by the state constitute a part of the respective counties within whose boundaries they are located by extending the county boundaries to the Rio Grande and are subject to the civil and criminal jurisdiction of these counties.

(c) Any parcels or tracts, parts of which are located in two separate counties, shall be surveyed by the county surveyors of both counties, who shall determine the portion of the land located in their respective counties and shall file the field notes of the land in their offices together with a map of the parcels or tracts in the map records of the county.

(d) For the purpose of determining the boundaries, the boundary lines of the parcels and tracts established by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries.

(e) Any parcels or tracts of land that are adjacent to or contiguous to a water improvement district or a conservation and reclamation district may be included within the district by a written contract entered into between the owner of the land and the board of directors of the district. The contract shall specifically describe the land to be included in the district, the character of water service to be furnished to the land, and the terms and conditions on which the land is to be included in the district and shall be acknowledged in the manner required for the acknowledgment of deeds and recorded in the deed records of the county in which the land is located.

(f) None of the provisions of this section may be construed to affect the ownership of the land.

Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.017. CHAMIZAL AREA. (a) The State of Texas accepts as part of its territory and assumes civil and criminal jurisdiction over the tract of land lying adjacent to the State of Texas which was acquired by the United States of America from the United Mexican States under the Convention for the Solution of the Problem of the Chamizal, signed August 29, 1963, and ceded to Texas by Act of Congress.

(b) The territory shall be a part of El Paso County.

(c) None of the provisions of this section affect the ownership of the land.

Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.018. CESSION OF CERTAIN EL PASO LAND. (a) To facilitate the project for rectification of the Rio Grande in the El Paso-Juarez Valley under the convention between the United States of America and the United Mexican States signed February 1, 1933,

without cost to the state, all right, title, and interest of the State of Texas in and to the bed and banks of the Rio Grande in El Paso County and Hudspeth County which may be necessary or expedient in the construction of the project is ceded to the United States of America.

(b) This cession is made on the express condition that the State of Texas retain concurrent jurisdiction with the United States of America over every portion of land ceded which remains within the territorial limits of the United States after the project is completed so that process may be executed in the same manner and with the same effect as before the cession took place.

(c) None of the provisions of this section may be construed as a cession or relinquishment of any rights which the State of Texas, its citizens, or any property owners have in the water of the Rio Grande, its use, or access to it.

Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. SPECIAL FUNDS

Sec. 11.041. PERMANENT SCHOOL FUND. (a) In addition to land and minerals granted to the permanent school fund under the constitution and other laws of this state, the permanent school fund shall include:

(1) the mineral estate in river beds and channels;

(2) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state; and

(3) the arms and the beds and shores of the Gulf of Mexico within the boundary of Texas.

(b) The land and minerals dedicated to the permanent school fund shall be managed as provided by law.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.042. ASYLUM FUND. The 400,000 acres of land set apart for the various asylums in equal portions of 100,000 acres for each by act of the legislature, approved August 30, 1856, is recognized

and set apart to provide a permanent fund for the support, maintenance, and improvement of the asylums.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.043. UNIVERSITY FUND. After payment of the amount due to the permanent school fund for proceeds from the sale of the portion of the public land set aside for payment of the public debt by act of the legislature in 1879 and payment directed to be made to the permanent school and university funds by act of the legislature in 1883, the remainder of the land not to exceed two million acres or the proceeds from their sale shall be divided in half and one of the halves shall constitute a permanent endowment fund for The University of Texas System.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. REGULATION OF THE PUBLIC DOMAIN

Sec. 11.071. RECOVERY OF VALUE OF MINERALS AND TIMBER. (a) At least semiannually, the commissioner and the county attorney of each county shall report to the attorney general the name and address of each person who has taken any minerals or other property of value from public land or who has cut, used, destroyed, sold, or otherwise appropriated any timber from public land and shall report any other data within their knowledge. The county attorneys also shall assist the attorney general relating to these matters in any manner he requests.

(b) The attorney general shall file suit in any county in which all or part of the injury occurred or in the county in which the defendant resides to recover the value of the property, or with the consent of the governor, the attorney general may compromise and settle any of these liabilities with or without suit.

(c) The attorney general shall pay all amounts collected or received by him to the permanent funds to which they belong.

(d) From amounts recovered by suit, the attorney general shall receive a fee of 10 percent and the county attorney shall receive a fee of five percent, and from amounts recovered by compromise, the

attorney general and county attorney shall each receive one-half of the fees to be taxed against the defendant as costs. No county attorney may receive compensation from cases not reported by him to the attorney general.

(e) Except as otherwise provided by law, no person may use for his benefit or cut or remove any mineral, plant, or anything of value located on land belonging to the permanent school fund without proper authority from the commissioner.

(f) In addition to any other penalties provided by law, a person violating the provisions of Subsection (e) of this section shall be liable for a civil penalty of not more than $10,000 for each thing of value cut, used, or removed. All civil penalties collected under this subsection shall be credited to the permanent school fund.

Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 208, Sec. 9, eff. Aug. 31, 1987.

Sec. 11.072. FENCES WITH AND WITHOUT GATES. (a) A person who has used any of the pasture land by joining fences or otherwise and who builds or maintains more than three miles lineal measure of fences running in the same general direction without a gate in it shall be fined not less than $200 nor more than $1,000.

(b) The gate in the fence described in Subsection (a) of this section shall be at least 10 feet wide and shall not be locked or kept closed so that it obstructs free ingress or egress.

(c) The provisions of this section do not apply to persons who have previously settled on land not their own, if the enclosure is 200 acres or less and if the principal pursuit of the person on the land is agriculture.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.073. DEFINITION OF FENCING. In Sections 11.074 and 11.075 of this code, "fencing" means the erection of any structure of wood, wire, wood and wire, or any other material, whether it encloses land on all sides or only one or more sides, which is intended to prevent the passage of cattle, horses, mules, sheep, goats, or hogs.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.074. HERDING AND LINE-RIDING. (a) No owner of stock, manager, agent, employee, or servant may fence, use, occupy, or appropriate by herding or line-riding any portion of the public land of the state or land which belongs to the public schools or asylums unless he obtains a lease for the land from the proper authority.

(b) Any owner of stock or his manager, agent, employee, or servant who fences, uses, occupies, or appropriates by herding or line-riding any portion of the land covered by Subsection (a) of this section without a lease for the land, on conviction, shall be fined not less than $100 nor more than $1,000 and confined in the county jail for not less than three months nor more than two years. Each day for which a violation continues constitutes a separate offense.

(c) Prosecution under this section may take place in the county in which a portion of the land is located or to which the county may be attached for judicial purposes or in Travis County.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.075. APPROPRIATION OF LAND BY FENCING. (a) Unless a lease for the land is obtained, any appropriation of public land of the state or land which belongs to the public schools and asylums by fencing or by enclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of livestock is an unlawful appropriation of land which is punishable by the penalty provided in Subsection (b) of Section 11.074 of this code.

(b) Each day that the violation continues constitutes a separate offense.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.076. UNLAWFUL ENCLOSURES. (a) If the governor is credibly informed that any portion of the public land or the land which belongs to any of the special land funds has been enclosed or

that fences have been erected on the land in violation of law, he may direct the attorney general to institute suit in the name of the state for the recovery of the land, damages, and fees.

(b) The fee for the attorney general may not be less than $10 if the amount recovered is less than $100, but if the amount of recovery is over $100, the fee shall be 10 percent paid by the defendant for the use and occupancy of the land and the removal of the enclosure and fences.

(c) The damages may not be less than five cents an acre a year for the period of occupancy.

(d) In a suit brought under this section, the court shall issue a writ of sequestration directed to any sheriff in the state requiring him to take into actual custody the land and any property on the land which belongs to the person who is unlawfully occupying the land and to hold the land and other property until the court issues further orders. The writ may be executed by the sheriff to whom it is delivered, and he shall proceed to execute the writ.

(e) The defendant in the suit may replevy the property as provided in other cases by executing the bond required by law.

(f) An appeal from a suit brought under this section has precedence over other cases.

(g) If judgment is recovered by the state in the suit, the court shall order the enclosure or fences removed and shall charge the costs of the suit to the defendant. Property on the land which belongs to the defendant and which is not exempt from execution may be used to pay costs and damages in addition to the personal liability of the defendant.

Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2644, ch. 707, Sec. 4(32), eff. Aug. 31, 1981.

Sec. 11.077. SUIT AGAINST ADVERSE CLAIMANT. If any public land is held, occupied, or claimed adversely to the state or to any fund of the state by any person or if land is forfeited to the state for any reason, the attorney general shall file suit for the land, for rent on the land, and to recover damages to the land.

Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.078. VENUE. A suit brought under the provisions of Section 11.076 or Section 11.077 of this code shall be brought in the county in which the land or any part of the land is located.

Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 11.079. ACCESS TO LAND. (a) The state, a permittee of the state, or a lessee or assignee of state land or minerals dedicated to the permanent school fund may exercise the power of eminent domain to obtain an easement whenever it is necessary to enter or cross the land of another person for the purpose of obtaining access to any land or interest in land that is owned by the state and that is dedicated by law to the permanent school fund.

(b) If the state or such permittee, lessee, or assignee and the private owner of the land through which an easement for access is sought cannot agree on the place or the terms for the easement to obtain access, either the state or such permittee, lessee, or assignee may, in order to provide that access, exercise this power of eminent domain in the manner provided by Chapter 21, Property Code.

(c) Easements acquired under this section are declared to be for the sole use and benefit of the state, its permittee, lessee, or assignee and may be used only to the extent necessary to achieve the required access or for the purposes for which the permit, lease, or assignment was granted. An easement so acquired is hereby dedicated to the permanent school fund.

(d) If the state desires to utilize the power of eminent domain to obtain an easement under this section for access to a tract of land, the attorney general shall institute condemnation proceedings as provided under Chapter 21, Property Code. If agreement regarding an easement for access cannot be reached with a private landowner, a permittee of the state or a lessee or assignee of land or minerals dedicated to the permanent school fund desiring to utilize this section to obtain an easement for access to a tract of land must institute the condemnation proceedings authorized by this section.

(e) If the easement acquired under this section is taken solely to benefit a tract of land in which the permanent school fund owns

only a mineral interest, the easement shall not be permanent but shall be limited to the term that the state minerals are held under a valid prospect permit or lease. The easement will terminate when the prospect permit and lease expires or terminates.

(f) This section is cumulative of the provisions of Subtitles C and D, Title 2, Natural Resources Code, relating to access to land and to the power of eminent domain. The special fund accounts established under Sections 51.401, 52.297, and 53.155 of this code may be used to compensate landowners for an easement to obtain access under this section.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 1, eff. Aug. 31, 1987.

Sec. 11.0791. OTHER PROVISIONS REGARDING ACCESS TO STATE LANDS. When a state governmental entity sells state land, the entity shall require that the state have the right of ingress and egress to remaining state land in the immediate area by an easement to a public thoroughfare.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.41, eff. Sept. 1, 1999.

Sec. 11.080. DAMAGES TO PERSONS AND PERSONALTY. When access to any land is obtained by the state under Section 11.079 of this code, the state shall be liable to the property owner to the same extent that any private easement holder would be held liable for the use of access across privately owned property.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 2, eff. Aug. 31, 1987.

Sec. 11.081. RULES. The General Land Office of the State of Texas shall promulgate and enforce rules governing the construction, maintenance, and use of roads created by access granted under Section 11.079 of this code.

Added by Acts 1987, 70th Leg., ch. 1061, Sec. 3, eff. Aug. 31, 1987.

Sec. 11.082. NOTICE TO SCHOOL LAND BOARD. (a) A state agency or political subdivision may not formally take any action that may affect state land dedicated to the permanent school fund without first giving notice of the action to the board. Notice of the proposed action shall be delivered by certified mail, return receipt requested, addressed to the deputy commissioner of the asset management division of the General Land Office on or before the state agency's or political subdivision's formal initiation of the action.

(b) The notice must:

(1) describe the proposed action;

(2) state the location of the permanent school fund land to be affected; and

(3) describe any foreseeable impact or effect of the state agency's or political subdivision's action on the permanent school fund land.

(c) An action taken by a state agency or political subdivision without the notice required by Subsection (a) of this section that affects state land dedicated to the permanent school fund is not effective as to permanent school fund land affected by the action.

(d) In this section:

(1) "Action" means:

(A) formal adoption of an agency or political subdivision policy;

(B) final adoption of an administrative rule;

(C) issuance of findings of fact or law;

(D) issuance of an administrative order in an administrative hearing; or

(E) adoption of a local ordinance or resolution.

(2) "Board" means the School Land Board.

(3) "Initiation" means the commencement of the first phase of public consideration of a formal policy, rule, or ordinance, or a hearing undertaken by a state agency or political subdivision that is intended to result in final adoption of a formal policy, rule, or ordinance.

(4) "Political subdivision" means a county, public school district, or special-purpose district or authority.

(5) "State agency" means:

(A) a department, commission, board, office, bureau, council, or other agency in the executive branch of state government other than the Texas Department of Transportation and the Railroad

Commission of Texas; or

(B) a university system or an institution of higher education as defined in Section 61.003, Education Code.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 7, eff. Sept. 1, 1993.

Sec. 11.083. RETENTION OF MINERAL RIGHTS. The state shall retain the mineral rights to state land that is sold unless it is impractical to do so.

Added by Acts 1999, 76th Leg., ch. 1499, Sec. 1.42, eff. Sept. 1, 1999.

Sec. 11.084. SCHOOL LAND BOARD APPROVAL OF PATENT FOR INTEREST IN LAND RELEASED BY STATE. (a) The School Land Board may approve a tract of land for patenting to release all or part of the state's interest in land, excluding mineral rights, if the board:

(1) finds that:

(A) the land is surveyed, unsold, permanent school fund land according to the records of the land office;

(B) the land is not patentable under the law in effect before January 1, 2002; and

(C) the person claiming title to the land:

(i) holds the land under color of title;

(ii) holds the land under a chain of title that originated on or before January 1, 1952;

(iii) acquired the land without actual knowledge that title to the land was vested in the State of Texas;

(iv) has a deed to the land recorded in the appropriate county; and

(v) has paid all taxes assessed on the land and any interest and penalties associated with any period of tax delinquency; and

(2) unanimously approves the release of the state's interest.

(b) This section does not apply to:

(1) beach land, submerged or filled land, or islands; or

(2) land that has been determined to be state-owned by judicial decree.

(c) This section may not be used to:

(1) resolve boundary disputes; or

(2) change the mineral reservation in an existing patent.

Added by Acts 2001, 77th Leg., ch. 310, Sec. 1, eff. Nov. 6, 2001.

Sec. 11.085. PROCEDURE FOR APPLYING FOR PATENT FOR INTEREST IN LAND RELEASED BY STATE. (a) A person claiming title to land may apply for a patent under Section 11.084 by filing with the commissioner an application on a form prescribed by the commissioner. The claimant must attach to the application all documentation necessary to support the claimant's request for a patent.

(b) The land office shall review the claimant's application to determine whether the claimant substantially meets the criteria for issuance of a patent under Section 11.084.

(c) If the land office determines that the application is complete for consideration by the board, the commissioner shall convene the board to determine whether a patent is to be issued under Section 11.084.

(d) The commissioner may adopt rules as necessary to administer Section 11.084 and this section.

Added by Acts 2001, 77th Leg., ch. 310, Sec. 1 eff. Nov. 6, 2001.

Sec. 11.086. CONFIDENTIALITY OF CERTAIN INFORMATION RELATED TO PURCHASE, SALE, OR DEVELOPMENT OF REAL PROPERTY. (a) Information relating to the development, location, purchase price, or sale price of real property developed, purchased, or sold by or for the School Land Board, Veterans' Land Board, land office, or commissioner under authority granted by this code, including a contract provision related to the development, purchase, or sale of the property, is confidential and exempt from disclosure under Chapter 552, Government Code, until all deeds for the property that are applicable to the transaction or series of related transactions are executed and until all substantive performance or executory requirements of applicable contracts have been satisfied. Information that is confidential and exempted from disclosure under this subsection includes an appraisal, completed report, evaluation, or investigation conducted for the purpose of locating or determining the purchase or sale price of the

property, or any report prepared in anticipation of developing, purchasing, or selling real property.

(b) Information that is confidential and excluded from disclosure under Subsection (a) is not subject to a subpoena directed to the School Land Board, Veterans' Land Board, land office, commissioner, attorney general, or governor.

Added by Acts 2001, 77th Leg., ch. 1317, Sec. 1, eff. Sept. 1, 2001. Renumbered from Sec. 11.084 and amended by Acts 2003, 78th Leg., ch. 532, Sec. 1, eff. June 20, 2003; Acts 2003, 78th Leg., ch. 1275, Sec. 2(111), eff. Sept. 1, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 381 (S.B. 596), Sec. 1, eff. June 15, 2007.

CHAPTER 12. RED RIVER BOUNDARY COMPACT; RED RIVER BOUNDARY COMMISSION

SUBCHAPTER A. RED RIVER BOUNDARY COMPACT

Sec. 12.001. ADOPTION OF COMPACT. This state enacts the Red River Boundary Compact into law and enters into the compact with the State of Oklahoma if that state legally joins in the compact in substantially the form provided by Section 12.002.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.002. TEXT OF COMPACT. The Red River Boundary Compact reads as follows:

RED RIVER BOUNDARY COMPACT

ARTICLE I. PURPOSE

(a) The states of Texas and Oklahoma recognize that:

(1) there are actual and potential disputes, controversies, criminal proceedings, and litigation arising, or that may arise, out of the location of the boundary line between the states along the Red River;

(2) the south bank of the Red River is the boundary between the states along the Red River;

(3) the boundary between the states changes as a result of the natural action of the river and, because of those changes and the nature of the land, the south bank of the river is often not readily or easily identified;

(4) while the south bank, at any given time, may be located through expensive and time-consuming survey techniques, such surveys can, at best, identify the south bank only as it exists at the time of the survey;

(5) locating the south bank through survey techniques is of minimal aid when agencies of the party states must locate the state boundary line for law enforcement, administrative, and taxation purposes; and

(6) the interests of the party states are better served by establishing the boundary between the states through use of a readily identifiable natural landmark than through use of an artificial survey line.

(b) It is the principal purpose of the party states in entering into this compact to establish an identifiable boundary between the states of Texas and Oklahoma along the Red River as of the effective date of this compact without interfering with or otherwise affecting private property rights or title to property. In addition, this compact serves the compelling purposes of:

(1) creation of a friendly and harmonious interstate relationship;

(2) avoidance of multiple exercise of sovereignty and jurisdiction, including matters of taxation, judicial and police powers, and exercise of administrative authority;

(3) avoidance of lack of exercise of sovereignty and jurisdiction over any lands along the boundary;

(4) avoidance of questions of venue in civil and criminal proceedings that may arise as a result of incidents along the boundary and avoidance or minimization of future disputes and litigation;

(5) promotion of economic and political stability; and

(6) placement of the boundary at a location that can be visually identified or located without the necessity of a current survey and that is close to the historical boundary location.

ARTICLE II. ESTABLISHMENT OF BOUNDARY

(a) In this article:

(1) "Vegetation" means trees, shrubs, grasses, and other plant species that substantially cover the ground. Whether the vegetation substantially covers the ground is determined by reference to the density of the coverage of the ground by trees, shrubs, grasses, and other plant species in the area adjacent to the relevant

portion of the riverbed.

(2) "Vegetation line" means the visually identifiable continuous line of vegetation that is adjacent to that portion of the riverbed kept practically bare of vegetation by the natural flow of the river and is continuous with the vegetation beyond the riverbed. Stray vegetation, patches of vegetation, or islands of vegetation within the riverbed that do not form such a line are not considered part of the vegetation line. Where the riverbed is entered by the inflow of another watercourse or is otherwise interrupted or disturbed by a man-made event, the line constituting the boundary is an artificial line formed by extending the vegetation line above and below the other watercourse or interrupted or disturbed area to connect and cross the watercourse or area.

(b) The permanent political boundary line between the states of Texas and Oklahoma along the Red River is the vegetation line along the south bank of the Red River except for the Texoma area, where the boundary does not change. For purposes of this compact:

(1) the Texoma area extends from the east bank of Shawnee Creek (which flows into the Red River from the south approximately one-half mile below the Denison Dam) at its mouth to the upper end of the normal pool elevation of Lake Texoma (which is 617 feet); and

(2) the upper end of the normal pool elevation of Lake Texoma is along the latitude of 33 degrees 54 minutes as it crosses the watercourse at the approximate location of longitude 96 degrees 59 minutes.

(c) The party states agree that the existing boundary within the Texoma area begins at the intersection of the vegetation line on the south bank of the Red River with the east bank of Shawnee Creek. From this point, the boundary extends west along the south bank of the Red River as the bank existed immediately before the commencement of the construction of Lake Texoma. From Shawnee Creek to Denison Dam, this boundary line is within the current channel of the Red River. Within Lake Texoma, this boundary line follows the south bank of the Red River as the bank was located and marked by the United States Army Corps of Engineers before the commencement of the construction of Lake Texoma.

(d) Within one year after the date the United States Congress consents to this compact, the Commissioner of the General Land Office of Texas and a designated member of the Oklahoma Red River Boundary Commission shall:

(1) locate the boundary line within the Texoma area as described by Subsection (c), using the survey that the United States Army Corps of Engineers prepared in connection with the construction of Lake Texoma and any other surveys, historical maps, or other information that may be available;

(2) prepare a map of the boundary line; and

(3) file the map in the state library and archives of each party state and with the Oklahoma Secretary of State, after which the map will be a part of this compact.

(e) Within one year after the date the map is filed under Subsection (d)(3), the United States Army Corps of Engineers shall permanently mark the boundary line within the Texoma area as shown on the map. The United States Army Corps of Engineers shall maintain the markers annually, or more frequently if necessary.

(f) The party states may:

(1) agree to equally share the cost of monumenting and maintaining the lines demarking both the boundary within the Texoma area and the upper limit of the normal pool elevation in a manner designed to make the boundary readily identifiable to the using public; or

(2) seek funding from other sources for monumenting and maintaining the lines.

(g) Should there be a change in the watercourse of the Red River, the party states recognize the rules of accretion, erosion, and avulsion. The states agree that accretion or erosion may cause a change in the boundary between the states if it causes a change in the vegetation line. With regard to avulsion, the states agree that a change in the course of the Red River caused by an immediately perceivable natural event that changes the vegetation line will change the location of the boundary between the states.

ARTICLE III. SOVEREIGNTY

On the effective date of this compact, the party states agree that the State of Oklahoma possesses sovereignty over all lands north of the boundary line established by this compact and that the State of Texas possesses sovereignty over all lands south of the boundary line established by this compact. This compact does not change or affect in any manner the sovereignty rights of federally recognized Indian tribes over lands on either side of the boundary line established by this compact. Tribal sovereignty rights continue to be established and defined by controlling federal law.

ARTICLE IV. PENDING LITIGATION

This compact does not affect the jurisdiction of any litigation concerning the title to any of the lands bordering the Red River pending in the courts of either of the party states or the United States as of the effective date of this compact. The states intend that such litigation, if any, continue in the trial and appellate courts of the jurisdiction where pending, until the litigation is finally determined.

ARTICLE V. PUBLIC RECORDS

(a) All public records in either party state concerning any lands the sovereignty over which is changed by this compact are accepted as evidence of record title to such lands, to and including the effective date of this compact, by the courts of the other state and the federal courts.

(b) As to lands the sovereignty over which is changed by this compact, the recording officials of the counties of each party state shall accept for filing certified copies of documents of title previously filed in the other state and documents of title using legal descriptions derived from the land descriptions of the other state. The acceptance of a document for filing has no bearing on its legal effect or sufficiency. The legal sufficiency of a document's form, execution, and acknowledgments, and the document's ability to convey or otherwise affect title, are determined by the document itself and the real estate laws of the jurisdiction in which the land was located at the time the document was executed or took effect.

ARTICLE VI. TAXES

(a) Except as provided by Subsections (b) and (c), the lands the sovereignty over which is changed by this compact are, after the effective date of this compact, subject to taxation only by the state gaining sovereignty over the lands by this compact.

(b) Taxes for the year of adoption of this compact for property the jurisdiction over which is changed by this compact may be lawfully imposed only by the state in which the property was located on January 1 of the year of adoption of this compact. The taxes for the year of adoption may be levied and collected by that state or its authorized governmental subdivisions or agencies, and any liens or other rights accrued or accruing, including the right of collection, are fully recognized, except that all liens or other rights arising out of the imposition of those taxes must be claimed or asserted within five years after this compact takes effect or they are barred.

(c) The party states recognize that the boundary between the states will change from time to time as a result of the natural actions of accretion, erosion, and avulsion and agree that for years subsequent to the year of adoption of this compact, the state within which lands adjoining the boundary line are located on January 1 of each year has the right to levy and collect taxes for the entire ensuing year.

(d) All taxes currently assessed by governmental entities in each party state as to lands that border or cross the boundary line established by this compact are presumed to be correct as to acreage within the particular jurisdiction, absent competent proof to the contrary presented in writing by the property owner or owners to the appropriate taxing agencies. All such proof must be presented to the appropriate taxing agencies before May 1 of the year following the year in which this compact takes effect. In subsequent years it is presumed that the acreage taxed in each jurisdiction for the previous year was correct unless evidence of change is furnished to or obtained by the various taxing agencies under rules and regulations adopted by those taxing agencies.

ARTICLE VII. PROPERTY AND WATER RIGHTS

This compact does not change:

(1) the title of any person or entity, public or private, to any of the lands adjacent to the Red River;

(2) the rights, including riparian rights, of any person or entity, public or private, that exist as a result of the person's or entity's title to lands adjacent to the Red River; or

(3) the boundaries of those lands.

ARTICLE VIII. EFFECTIVE DATE

This compact takes effect when enacted by the states of Texas and Oklahoma and consented to by the United States Congress.

ARTICLE IX. ENFORCEMENT

(a) This compact does not limit or prevent either party state from instituting or maintaining any action or proceeding, legal or equitable, in any court having jurisdiction, for the protection of any right under this compact or the enforcement of any of its provisions.

(b) This compact is not binding or obligatory on either party state unless and until it has been enacted by both states and consented to by the United States Congress. Notice of enactment of this compact by each state shall be given by the governor of that

state to the governor of the other state and to the president of the United States. The president is requested to give notice to the governors of the party states of the consent to this compact by the United States Congress.

ARTICLE X. AMENDMENTS

This compact remains in full force and effect unless amended in the same manner as it was created.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.003. NEGOTIATIONS TO RESOLVE DIFFERENCES. (a) Until the State of Oklahoma enters into the Red River Boundary Compact in substantially the form provided by Section 12.002, the Commissioner of the General Land Office has the authority to negotiate with the appropriate Oklahoma representative to resolve any differences between the states of Texas and Oklahoma regarding matters covered by the compact. The commissioner shall conduct the negotiations in cooperation with the Red River Boundary Commission created by H.C.R. No. 128, Acts of the 74th Legislature, Regular Session, 1995.

(b) The Commissioner of the General Land Office shall report annually to the governor of this state, or more frequently if necessary, on the status of the negotiations.

(c) Notwithstanding any other provision of this subchapter, if the boundary in the Texoma area, as described by Article II(b)(1), Red River Boundary Compact, Section 12.002, is not marked in accordance with Article II of the compact, the Red River Boundary Commission shall confer and act jointly with representatives appointed on behalf of the State of Oklahoma to redraw the boundary in the Texoma area in accordance with the provisions of this chapter.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 3, eff. June 14, 2013.

Sec. 12.004. IMPLEMENTATION OF COMPACT. (a) If the State of Oklahoma enters into the Red River Boundary Compact in substantially the form provided by Section 12.002, the Commissioner of the General Land Office has the authority to negotiate with the appropriate

Oklahoma representative to establish procedures for implementing the compact's provisions. The commissioner shall conduct the negotiations in cooperation with the Red River Boundary Commission.

(b) The Commissioner of the General Land Office shall report annually to the governor of this state, or more frequently if necessary, on the status of the negotiations.

(c) A procedure for implementing a provision of the compact must be approved by the governor of this state.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

Sec. 12.005. RELATION TO OTHER LAW AND LITIGATION. The Red River Boundary Compact does not affect:

(1) the Red River Compact, the text of which is set out in Section 46.013, Water Code; or

(2) the riparian rights of adjacent landowners to access and use the waters of the Red River as provided by the Treaty of Amity, Settlement and Limits, Feb. 22, 1819, United States-Spain, 8 Stat. 252, T.S. No. 327; or

(3) litigation pending in either state involving title to land or boundaries of rivers or water bodies of that state.

Added by Acts 1999, 76th Leg., ch. 212, Sec. 1, eff. May 24, 1999.

For expiration of this subchapter, see Section 12.058.

SUBCHAPTER B. RED RIVER BOUNDARY COMMISSION

Sec. 12.051. DEFINITIONS. In this subchapter:

(1) "Commission" means the Red River Boundary Commission.

(2) "Texoma area" means the area defined by the Texoma Area Boundary Agreement.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.052. CREATION OF COMMISSION. The Red River Boundary Commission is established to oversee the redrawing of the boundary between this state and the State of Oklahoma in the Texoma area.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.053. MEMBERSHIP. (a) The commission is composed of five members appointed by the governor to represent:

(1) private property owners;

(2) local governments;

(3) state elected officials; and

(4) the general public.

(b) The governor shall designate one member as the presiding officer of the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.054. COMPENSATION. A commission member is not entitled to receive compensation for service on the commission but may receive reimbursement for travel expenses incurred while conducting commission business.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.055. STAFF SUPPORT. The General Land Office, the office of the attorney general, and the Texas Commission on Environmental Quality shall provide necessary staff support to the commission.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.

Sec. 12.056. POWERS AND DUTIES. The commission shall confer and act jointly with representatives appointed on behalf of the State of Oklahoma to:

(1) evaluate the methods, surveys, historical maps, and other information used to establish the boundary line between this state and the State of Oklahoma in the Texoma area;

(2) determine the location of the south bank of the Red River as the bank was located and marked by the United States Army Corps of Engineers before the beginning of construction of Lake Texoma, in accordance with Article II(c), Red River Boundary Compact, Section 12.002;

(3) redraw the boundary line between this state and the State of Oklahoma on any real property for which the United States Army Corps of Engineers granted an easement before August 31, 2000, to at least two districts or authorities created under Section 59, Article XVI, Texas Constitution, for the construction, operation, and maintenance of a water pipeline and related facilities in the Texoma area in order to negate any effects the boundary as it is currently drawn has on property interests associated with those easements in the Texoma area, in such a way that there is no net loss of property between either state so as to ensure that the redrawn boundary does not increase the political power or influence of either state, and in accordance with:

(A) the Lake Texoma preconstruction survey of the south bank of the Red River prepared by the United States Army Corps of Engineers; or

(B) other historical records or documentation of the United States Army Corps of Engineers identifying the location of the south bank of the Red River, if the survey described by Subdivision (3)(A) is unavailable;

(4) hold hearings and conferences in this state and in the State of Oklahoma as necessary to accomplish the purposes of this section; and

(5) take other action, alone or in cooperation with the State of Oklahoma or the United States, necessary to accomplish the purposes of this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 1, eff. May 23, 2015.

Sec. 12.057. REPORTS. (a) Not later than January 15, 2015, the commission shall report to the governor, lieutenant governor, speaker

of the house of representatives, and appropriate committees of the legislature the commission's findings and recommendations concerning joint action by this state and the State of Oklahoma regarding amendment of the Texoma Area Boundary Agreement to incorporate the boundary between this state and the State of Oklahoma in the Texoma area as redrawn.

(b) Not later than July 30, 2021, the commission shall issue a final report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 2, eff. May 23, 2015.
Acts 2017, 85th Leg., R.S., Ch. 82 (H.B. 641), Sec. 1, eff. May 23, 2017.

Sec. 12.058. EXPIRATION OF SUBCHAPTER. This subchapter expires December 31, 2021.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1064 (H.B. 3212), Sec. 4, eff. June 14, 2013.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 94 (H.B. 908), Sec. 3, eff. May 23, 2015.
Acts 2017, 85th Leg., R.S., Ch. 82 (H.B. 641), Sec. 2, eff. May 23, 2017.

SUBTITLE B. SURVEYS AND SURVEYORS
CHAPTER 21. SURVEYS AND FIELD NOTES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Navigable stream" means a stream which retains an average width of 30 feet from the mouth up.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. SURVEYS

Sec. 21.011. SURVEYS OF PUBLIC LAND. Each survey of public land shall be made under authority of law and by a surveyor duly appointed, elected, or licensed and qualified.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.012. SURVEYS ON NAVIGABLE STREAMS. (a) If the circumstances of the lines previously surveyed under the law will permit, land surveyed for individuals, lying on a navigable stream, shall front one-half of the square on the stream with the line running at right angles with the general course of the stream.

(b) A navigable stream may not be crossed by the lines of a survey.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.013. SURVEYS NOT ON A NAVIGABLE STREAM. Surveys that are not made on navigable streams shall be in a square as far as lines previously surveyed will permit.

Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.014. SURVEY FOR DIVISION LINE. (a) Before running a division line between two settlers or occupants claiming land, the surveyor shall give written notice to the interested parties.

(b) A survey made contrary to the true intent and meaning of this section is invalid.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. FIELD NOTES

Sec. 21.041. FIELD NOTES OF A SURVEY OF PUBLIC LAND. The field notes of a survey of public land shall state:

(1) the county in which the land is located;

(2) the authority under which the survey is made and a true description of the survey;

(3) the land by proper field notes with the necessary calls and connections for identification, observing the Spanish measurement by varas;

(4) a diagram of the survey;

(5) the State Plane Coordinates based on the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 values for the beginning point on the survey with appropriate reference to zone, mapping angle, grid distances, acreage and the N.G.S. Station to which the survey is tied;

(6) the names of the field survey personnel;

(7) the date the survey was made; and

(8) the signature of the surveyor.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 616, Sec. 1, eff. Sept. 1, 1987.

Sec. 21.042. SURVEYOR'S CERTIFICATION. (a) The surveyor shall certify officially:

(1) to the correctness of the survey;

(2) that the survey was made according to law;

(3) that the survey was actually made in the field; and

(4) that the field notes are duly recorded, giving the book and page.

(b) If the survey was made by a deputy, the county surveyor shall certify officially that:

(1) he has examined the field notes;

(2) he finds them correct; and

(3) he has determined that the survey is duly recorded, giving the book and page of record.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 21.043. LOST FIELD NOTES. (a) If the original field notes of an authorized survey are lost or destroyed, the owner or his agent may obtain a certified copy of the record from the county surveyor on making an affidavit of the loss or destruction and filing it in the office of the county surveyor where the survey was recorded.

(b) The certified copy shall be as valid as the original record and shall secure to the owner all the rights before the commissioner that the original would have secured.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.044. INCORRECT FIELD NOTES. (a) The commissioner shall have a plain statement of errors in any field notes submitted to the land office, together with a sketch of the map, forwarded by mail, or personally by the interested party, to the surveyor who made the survey, with a request to correct and return the field notes and map.

(b) The surveyor shall correct and return the field notes and map at once without further charge.

(c) If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts and furnish a true sketch of the survey with its connections.

(d) This section does not require the commissioner or a surveyor to make a new survey of land or a portion of the land after a survey of the land is accepted by the commissioner for filing in the official records of the land office.

Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2005, 79th Leg., Ch. 160 (H.B. 3340), Sec. 1, eff. September 1, 2005.

SUBCHAPTER D. TEXAS COORDINATE SYSTEMS

Sec. 21.071. ADOPTION OF COORDINATE SYSTEMS. (a) The systems of plane coordinates which have been established by the National Oceanic Survey/National Geodetic Survey for defining and stating the positions or locations of points on the surface of the earth within the State of Texas are adopted and will be known and designated as the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983.

(b) Each system is a separate system and must be used as a separate system.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 3, eff. Sept. 1, 1987.

Sec. 21.072. PURPOSE AND LIMITATIONS OF COORDINATE SYSTEMS. (a) The only purpose for adopting the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983 is to recognize a system for use in the State of Texas to definitely ascertain positions on the surface of the earth.

(b) Except as provided in Section 21.041 of this code, the use of a system is not required, and the provisions of this subchapter shall not be construed to set aside or disturb any corner or survey already established.

(c) The use of the term "Texas Coordinate System" on a map, report, survey, or other document is limited to coordinates based on a Texas Coordinate System as defined in this subchapter.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 2, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 616, Sec. 4, eff. Sept. 1, 1987.

Sec. 21.073. DIVISION OF STATE INTO ZONES. For the purpose of using a system, the state is divided into five zones:

(1) the North Zone;
(2) the North Central Zone;
(3) the Central Zone;
(4) the South Central Zone; and
(5) the South Zone.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 5, eff. Sept. 1, 1987.

Sec. 21.074. AREA WITHIN ZONES. (a) The area included in the following counties constitutes the North Zone: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(b) The area included in the following counties constitutes the North Central Zone: Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackelford, Smith, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

(c) The area included in the following counties constitutes the Central Zone: Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

(d) The area included in the following counties constitutes the South Central Zone: Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad,

Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

(e) The area included in the following counties constitutes the South Zone: Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.075. ZONE NAMES IN LAND DESCRIPTION. (a) As established for use in the North Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, North Zone" or "Texas Coordinate System of 1983, North Zone."

(b) As established for use in the North Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, North Central Zone" or "Texas Coordinate System of 1983, North Central Zone."

(c) As established for use in the Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, Central Zone" or "Texas Coordinate System of 1983, Central Zone."

(d) As established for use in the South Central Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, South Central Zone" or "Texas Coordinate System of 1983, South Central Zone."

(e) As established for use in the South Zone, the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983 shall be named, and in any land description in which it is used it shall be designated, the "Texas Coordinate System of 1927, South

Zone" or "Texas Coordinate System of 1983, South Zone."

Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 6, eff. Sept. 1, 1987.

Sec. 21.076. DEFINITIONS. (a) For the purpose of precisely defining the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983, the following definitions are adopted:

(1) The Texas Coordinate System of 1927, North Zone, and the Texas Coordinate System of 1983, North Zone, is a Lambert conformal projection, having standard parallels at north latitudes 34° 39' and 36° 11', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 101° 30' west longitude and the parallel 34° 00' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 200,000 meters (236,220 varas) and y = 1,000,000 meters (1,181,100 varas).

(2) The Texas Coordinate System of 1927, North Central Zone, and the Texas Coordinate System of 1983, North Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 32° 08' and 33° 58', along which parallels the scale shall be exact. The origin of coordinates for the 1927 coordinate system is at the intersection of the meridian 97° 30' west longitude and the parallel 31° 40' north latitude. This origin is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of coordinates for the 1983 coordinate system is at the intersection of the meridian 98° 30' west longitude and the parallel 31° 40' north latitude. This origin is given the coordinates: x = 600,000 meters (708,660 varas) and y = 2,000,000 meters (2,362,200 varas).

(3) The Texas Coordinate System of 1927, Central Zone, and the Texas Coordinate System of 1983, Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 30° 07' and 31° 53', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 100° 20' west longitude and the parallel 29° 40' north latitude. The origin of the 1927 coordinate system is given the coordinates: x =

2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 700,000 meters (826,770 varas) and y = 3,000,000 meters (3,543,300 varas).

(4) The Texas Coordinate System of 1927, South Central Zone, and the Texas Coordinate System of 1983, South Central Zone, is a Lambert conformal projection, having standard parallels at north latitudes 28° 23' and 30° 17', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian of 99° 00' west longitude and the parallel 27° 50' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 600,000 meters (708,660 varas) and y = 4,000,000 meters (4,724,400 varas).

(5) The Texas Coordinate System of 1927, South Zone, and the Texas Coordinate System of 1983, South Zone, is a Lambert conformal projection, having standard parallels at north latitudes 26° 10' and 27° 50', along which parallels the scale shall be exact. The origin of coordinates is at the intersection of the meridian 98° 30' west longitude and the parallel 25° 40' north latitude. The origin of the 1927 coordinate system is given the coordinates: x = 2,000,000 feet (720,000 varas) and y = 0 feet (0 varas). The origin of the 1983 coordinate system is given the coordinates: x = 300,000 meters (354,330 varas) and y = 5,000,000 meters (5,905,500 varas).

(b) The position of the Texas Coordinate System of 1927 and the Texas Coordinate System of 1983 shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the National Oceanic and Atmospheric Administration for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927 or 1983, and whose coordinates have been computed on the system defined in this subchapter. Any of these stations may be used for establishing a survey connection with the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983.

Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 7, eff. Sept. 1, 1987.

Sec. 21.077. UNIT OF MEASUREMENT. The unit of measurement in this subchapter has the following values, based on the International Meter established by the National Bureau of Standards:

(1) one meter = 39.37 inches exactly;

(2) one foot = 12.00 inches exactly; and

(3) one vara = 33-1/3 inches exactly.

Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 21.078. TERMS "X COORDINATE" AND "Y COORDINATE". (a) The plane coordinate values for a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of either system, shall consist of two distances, expressed in U.S. Survey Feet and decimals of a foot or varas or tenths of a vara when using the Texas Coordinate System of 1927 and expressed in meters and decimals of a meter, in U.S. Survey Feet or decimals of a foot, or in varas or tenths of a vara when using the Texas Coordinate System of 1983.

(b) One of these distances, to be known as the "x coordinate," shall give the position in an east-and-west direction; the other, to be known as the "y coordinate," shall give the position in a north-and-south direction.

(c) These coordinates shall be made to depend on and conform to the plane rectangular coordinate values for the monumented points of the North American Horizontal Geodetic Control Network as published by the National Oceanic Survey/National Geodetic Survey, or its successors, and whose plane coordinates have been computed on the systems defined in this subchapter.

(d) Any station described in this section may be used for establishing a survey connection to either the Texas Coordinate System of 1927 or the Texas Coordinate System of 1983.

Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 8, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 991, Sec. 4, eff. Sept. 1, 1993.

Sec. 21.079. LAND IN MORE THAN ONE ZONE. If a tract of land to be defined by a single description extends from one zone into another

of the coordinate zones, the positions of all points on its boundaries may be referred to by either of the zones, the zone which is used being specifically named in the description.

Acts 1977, 65th Leg., p. 2360, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 616, Sec. 9, eff. Sept. 1, 1987.

CHAPTER 23. COUNTY SURVEYORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 23.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 23.011. ELECTION. (a) A county surveyor is elected to a four-year term as provided by Article XVI, Sections 64 and 65, of the Texas Constitution.

(b) To be eligible to serve as a county surveyor, a person must be a registered professional land surveyor.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1091, Sec. 29, eff. Sept. 1, 1989.

Sec. 23.012. RESIDENCE. The county surveyor shall reside in the county.

Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.013. BOND. The county surveyor shall execute a bond conditioned on the faithful performance of the duties of the office.

The amount of the bond shall be fixed by the commissioners court and shall be not less than $500 nor more than $10,000.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.014. DEPUTY SURVEYOR. (a) A county surveyor may appoint a deputy surveyor as he considers necessary.

(b) The county surveyor shall administer the deputy surveyor's official oath and take his bond in the sum of not less than $500 nor more than $10,000, conditioned on the faithful performance of the duties of the office.

(c) The deputy may perform all acts authorized or required by law to be done by the county surveyor.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.015. CHAIN CARRIERS AND MARKERS. (a) A county surveyor may employ persons 16 years of age or older as chain carriers or markers.

(b) The county surveyor shall administer an oath to each of these employees to faithfully perform his duties in accordance with the instructions given him.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.016. OFFICE LOCATION. (a) The county surveyor's office shall be located in the courthouse or in a suitable building at the county seat.

(b) Rent for an office outside the courthouse shall be paid by the commissioners court on showing that:

(1) the rent is reasonable;

(2) the office is necessary; and

(3) an office is not available at the courthouse.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 23.017. ABOLITION OF OFFICE IN CERTAIN COUNTIES. In a county in which the office of county surveyor was abolished by Chapter 315, Acts of the 61st Legislature, Regular Session, 1969 (Article 5298a, Vernon's Texas Civil Statutes), the commissioners court may, when the court considers it necessary, employ a qualified person to perform a function formerly performed by the county surveyor.

Added by Acts 1987, 70th Leg., ch. 149, Sec. 25, eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 23.051. IN GENERAL. The county surveyor shall perform the duties required of him by law.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.0515. FIELD NOTES, PLATS, AND OTHER DOCUMENTS. (a) In a county in which there is a county surveyor, only the county surveyor may:

(1) file and record field notes and plats of surveys made in the county and other documents required by law to be recorded in the county surveyor's records; and

(2) issue a certificate of fact and certify the correctness of a copy of any document, record, or entry shown by the records of the county surveyor.

(b) If the county surveyor and each authorized deputy of the county surveyor are absent from the county surveyor's office, the county clerk of the county has unrestricted access to the county surveyor's office and public records and may:

(1) record field notes, plats, and other documents required to be recorded in the county surveyor's records; and

(2) issue a certificate of fact and certify the correctness of a copy of any document, record, or entry shown by the official records of the county surveyor.

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 7, eff. June 1, 2003.

Sec. 23.052. SURVEYS ON WHICH PATENTS ARE TO BE OBTAINED. The county surveyor shall:

(1) receive and examine all field notes of surveys made in the county on which patents are to be obtained;

(2) certify to the same according to law; and

(3) record the field notes in a book to be kept by him for that purpose.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.053. RECORD OF FIELD NOTES. (a) The commissioners court shall furnish the county surveyor all necessary books of record.

(b) The county surveyor shall record in a well-bound book all the surveys in his county, with the plats that he may make, whether private or official.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.054. RIGHT OF INSPECTION. At all times, any interested person, agent, or attorney may examine the books, papers, plats, maps, or other archives belonging to the office of the county surveyor on the payment of the fee set by law. In addition to the fees allowed by law for field work, the county surveyor may charge 20 cents per 100 words for the record.

Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.055. BOUND RECORDS. If the commissioners court considers it necessary, it may order that the county surveyor's record be transcribed in good and substantial books by the county surveyor or special deputies sworn to make true copies of the record.

For this service, not more than 15 cents per 100 words shall be allowed to be paid out of the county treasury.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.056. LOST RECORDS. (a) If the maps, field notes, or other records of the county surveyor's office, or any part of them, are lost or destroyed, the county surveyor shall obtain from the commissioner a transcript of the lost records, certified to as required by law.

(b) The certified copy has the same force and effect as the original.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.057. CUSTODY OF RECORDS IN ABSENCE OF COUNTY SURVEYOR; POWERS AND DUTIES OF COUNTY CLERK. If a county does not have a county surveyor, the county clerk of the county:

(1) is the legal custodian of the county surveyor's records;

(2) shall take charge of all records, maps, and papers belonging to the county surveyor's office and safely keep them in the county clerk's office; and

(3) may make any certificate and certify any copy that the county surveyor would be authorized to make or certify.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1421, Sec. 8, eff. June 1, 2003.

Sec. 23.058. DELIVERY OF RECORDS TO SUCCESSOR. On removal from office or at the expiration of his term of office, the county surveyor shall deliver to his successor all records, books, papers, maps, and other things pertaining to his office.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 23.059. FAILURE TO SURVEY. If a county surveyor fails, neglects, or refuses to make a survey or have a survey made, within one month after the amount of lawful surveying fees are tendered to him by a person legally entitled to the survey, he and his sureties shall be liable on his official bond to the injured parties in the amount of damages or injury the parties may sustain by reason of the neglect, refusal, or failure.

Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 23.060. FEES FOR RECORDING AND ISSUING DOCUMENTS. (a) The fees for recording documents in the county surveyor's records, for issuing certificates, and for making certified copies are the fees provided by law.

(b) The county surveyor is entitled to fees for all documents recorded by the county surveyor or a deputy of the county surveyor and for all certificates and certified copies issued by the county surveyor or a deputy of the county surveyor.

(c) The county clerk of the county is entitled to all fees for documents recorded by the county clerk and for all certificates and certified copies issued by the county clerk under Sections 23.0515(b) and 23.057(3).

Added by Acts 2001, 77th Leg., ch. 1421, Sec. 9, eff. June 1, 2003.

SUBTITLE C. ADMINISTRATION
CHAPTER 31. GENERAL LAND OFFICE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 31.001. DEFINITIONS. In this chapter:

(1) "Appraiser" means a state-certified or state-licensed real estate appraiser who:

(A) is employed by or contracts with the land office; and

(B) performs professional valuation services completely and in a manner that is independent, impartial, and objective.

(2) "Board" means the School Land Board.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Division" means the asset management division of the General Land Office or any other division delegated the duties of the asset management division by the commissioner.

(5) "Evaluation report" means the annual report prepared by the commissioner as provided by Subchapter E.

(6) "Exchange" means an exchange of equal value or an exchange of real property accompanied by consideration.

(7) "Governor's report" means the report prepared by the commissioner as provided by Section 31.157.

(8) "Institution of higher education" means the Texas State Technical College System, the Southwest College for the Deaf, or an institution of higher education, excluding a public junior college, as defined by Section 61.003, Education Code.

(9) "Land office" means the General Land Office.

(10) "Market value" means the value of real property determined by an appraisal of the real property performed by an appraiser.

(11) "Political subdivision" means a municipality, county, public school district, levee improvement district, municipal utility district, or any other special purpose district authorized by state law.

(12) "Real estate transaction" means a sale, lease, trade, exchange, gift, grant, or other conveyance of a real property interest.

(13) "Real property owned by the state" means any interest in real property in the possession of the state or a state agency, including real property held in trust by a state agency.

(14) "State" means the State of Texas.

(15) "State agency" means a board, commission, department, institution, office, or other agency of state government, including an institution of higher education but excluding a special purpose district or authority.

Acts 1977, 65th Leg., p. 2370, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 2 (H.B. 1101), Sec. 5, eff. September 1, 2019.

Sec. 31.002. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the land office, the following statutes do not apply to the land office:

(1) a statute that would require the land office to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the land office.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 1, eff. May 25, 2007.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 31.011. LAND OFFICE ESTABLISHED. There shall be one General Land Office located in Austin, which shall register all land titles emanating from the state if not prohibited by the constitution.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 31.014. COMMISSIONER'S LIABILITY. The commissioner and a surety on a bond authorized under Chapter 653, Government Code, are responsible to any person who is injured by removal, withdrawal, or alteration of any record or file in the land office, unless the commissioner is able to show that the act has taken place with the permission of the person owning the file or record.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 20, eff. Sept. 1, 2003.

Sec. 31.015. CHIEF CLERK. (a) The commissioner shall appoint a chief clerk.

(b) The chief clerk may perform any of the duties of the commissioner if the commissioner is sick, is absent, dies, or resigns.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 21, eff. Sept. 1, 2003.

Sec. 31.016. ABSTRACT CLERK. The commissioner shall designate one of his clerks as the abstract clerk and shall assign to him the special duty to correct the abstracts of patented, titled, and surveyed real property required to be kept in the land office to reflect errors, changes caused by cancellation of patents and in county lines, and the creation of new counties and to add new patented surveys on the date they are patented.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 3, eff. June 20, 2003.

Sec. 31.017. RECEIVER. With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiver for the land office.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 31(28), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 3, eff. June 20, 2003.
Reenacted by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.002, eff. September 1, 2005.

Sec. 31.018. TRANSLATOR. (a) The commissioner shall appoint a translator who thoroughly understands the Spanish and English languages.

(b) The translator shall take the official oath.

(c) The translator shall translate into English any laws and public contracts relating to titles to real property and any original titles or papers which are written in the Spanish language and which are filed in the land office.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 22, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 4, eff. June 20, 2003.

Sec. 31.019. SURVEYORS. (a) The commissioner shall appoint a chief surveyor and as many assistant surveyors as authorized by law.

(b) The chief surveyor and the chief surveyor's assistant surveyors shall draw and complete county maps.

(c) The chief surveyor and the chief surveyor's assistant surveyors shall perform drafting and other duties required by the commissioner for the benefit of the state or individuals.

Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 5, eff. June 20, 2003.

Sec. 31.021. REIMBURSEMENT FOR NOTARY PUBLIC EXPENSE. The land office may reimburse an employee for the fees and costs of a bond that are required for appointment as a notary public if the employee provides notary public service as part of the employee's duties with the land office.

Added by Acts 1979, 66th Leg., p. 70, ch. 45, Sec. 1, eff. April 11, 1979.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 31.051. GENERAL DUTIES. The commissioner shall:

(1) superintend, control, and direct the official conduct of subordinate officers of the land office;

(2) execute and perform all acts and other things relating to public real property of the state or rights of individuals in public real property which is required by law;

(3) make and enforce suitable rules consistent with the law; and

(4) give information when required to the governor and the legislature relating to public real property and the land office.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 6, eff. June 20, 2003.

Sec. 31.0515. DUTIES RELATED TO THE ALAMO COMPLEX. The land office shall:

(1) employ staff necessary to preserve and maintain the Alamo complex and contract for professional services of qualified consultants; and

(2) prepare an annual budget and work plan, including preservation, future construction, and usual maintenance for the Alamo complex, including buildings on the Alamo property, their contents, and their grounds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 1, eff. September 1, 2011.

Sec. 31.052. CUSTODY OF RECORDS. (a) Books, accounts, records, papers, maps, and original documents relating to real property titles which are termed archives by law shall be the books and papers of the land office under the control and custody of the commissioner.

(b) The commissioner shall keep in the land office a copy of each permit, lease, or other paper issued under law.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 7, eff. June 20, 2003.

Sec. 31.053. FILING PAPERS. (a) The commissioner shall adopt the most convenient method for filing papers and preserving records of the land office.

(b) A list of all papers in each file shall be retained in the

file.

(c) Each employee who files a paper shall place his name on it.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 31.054. PUBLIC ACCESS TO AND REMOVAL OF PAPERS. (a) Any person who desires to examine any paper, record, or file must make a written request on a form and according to procedures prescribed by the commissioner. The commissioner may establish procedures as reasonably necessary to maintain the integrity of the records.

(b) No transfer or deed which may be a link in any chain of title to any certificate on file in the land office may be removed by any person, but the commissioner shall deliver to the interested person on demand certified copies which shall have the same force and effect as the originals.

(c) If the genuineness of any original paper is questioned in a suit, the commissioner, on order of the court in which the suit is pending, shall deliver the original paper to the proper person and shall retain a certified copy of the paper which will have the same force and effect as the original if the original is lost.

Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Sec. 31.056. REVISION, COMPILATION, AND PRINTING OF ABSTRACTS. (a) The commissioner may prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed real property which were previously made by the land office.

(b) The various counties of the state may be apportioned into districts for the purpose of revising and compiling the abstracts and the abstracts of each of the districts may be compiled in a separate volume.

(c) The commissioner may distribute to the officers of the state who require its use but have not previously received a set, one complete set of the abstracts, as supplemented, of patented, titled, and surveyed real property. The commissioner may distribute to officers of counties who are required to use abstracts copies of

supplementary abstracts.

(d) The commissioner may provide the abstracts and supplementary abstracts electronically.

(e) The commissioner may make available a sufficient number of volumes and supplementary abstracts of patented, titled, and surveyed real property to meet the demand.

(f) The land office shall pay the cost of the abstracts and the supplementary abstracts from its appropriated funds.

(g) Copies of the abstracts and supplementary abstracts may be sold at a reasonable price to any person who applies for a copy. The commissioner shall deposit any money received from the sale of surplus volumes and supplementary abstracts to the credit of the General Revenue Fund.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 866 (H.B. 2971), Sec. 1, eff. June 10, 2019.

Sec. 31.058. RECEIVING FUNDS. (a) The receiver shall receive funds required by law to be paid to the commissioner and on request shall give to each person who deposits money a receipt stating the amount, the name of the person, and a description of the purpose of the remittance.

(b) If funds are received which are of a general character in advance of fees and dues, it shall be stated.

(c) The receiver shall be responsible to the state or individual for the funds.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.

Sec. 31.059. RECEIVER'S BOOKS. (a) The receiver shall keep books in which the following shall be entered:

(1) each deposit separately; and

(2) the name of the person.

(b) The receiver shall keep letters and other vouchers filed in neat and regular order and number corresponding with the books of the office.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(128), eff. June 17, 2011.

(d) In the books of the office, the receiver shall keep separate columns indicating the amount of funds paid.

(e) On removal from office or resignation, the receiver shall turn over the books of the office, accounts, and money to the appointed successor or to the commissioner and shall receive a receipt for them.

Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.01, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1091, Sec. 8, eff. June 20, 2003.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(128), eff. June 17, 2011.

Sec. 31.062. EMBEZZLEMENT. If a suspended receiver is found guilty of embezzlement, the receiver shall be removed from office and a suit shall be instituted to recover on a bond authorized under Chapter 653, Government Code.

Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 285, Sec. 23, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 33(1), eff. June 20, 2003.
Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.003, eff. September 1, 2005.

Sec. 31.064. SETTING AND COLLECTING FEES. The commissioner shall set and collect, for the use of the state, reasonable fees in amounts for filing fees, preparation of certificates of fact, certified copies, maps, reproduction of maps and sketches, Spanish translations, patents and deeds of acquittance, and for other miscellaneous services, including but not limited to shipping in a mailing tube and typed transcriptions or taped copies of tapes or

other sound recordings, and any other provided services and products.

Added by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(m), eff. Sept. 1, 1983. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 9, eff. June 20, 2003.

Sec. 31.065. AUTHORITY TO ACCEPT GRANTS, GIFTS, DEVISES, TRUSTS, AND BEQUESTS. (a) In the absence of any law to the contrary, the commissioner may, if the commissioner determines it to be in the best interest of the state, accept grants, gifts, devises, or bequests, either absolutely or in trust, of money or real or personal property on behalf of the state. Real property so acquired by the state becomes public free school land unless the person making the grant, gift, devise, or bequest provides that the real property is to be possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity or provides that it is to be held in some other manner by the state.

(b) Under Subsection (a) of this section, the commissioner may accept a grant, gift, devise, or bequest even if it is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the grant, gift, devise, or bequest is for the benefit of the state.

(c) If the commissioner determines that the real property acquired by the state by grant, gift, devise, or bequest is not suitable for the purpose for which the grant, gift, devise, or bequest was originally made, the commissioner together with the agency, board, commission, department, or other state entity, if any, designated to possess, administer, or use the real property may exchange the real property for real property that is suitable for such purpose.

(d) If real property acquired by grant, gift, devise, or bequest is not held as part of the permanent school fund or possessed, administered, or used by a particular state agency, board, commission, department, or other particular state entity, the commissioner may manage that real property or sell or exchange the real property under terms and conditions the commissioner determines to be in the best interest of the state. Real property sold under this subsection must be sold in accordance with Section 31.158.

Proceeds of the sale that are not required for the management of real property under this subsection shall be deposited in the Texas farm and ranch lands conservation fund established under Chapter 84, Parks and Wildlife Code. Real property acquired under this subsection may be dedicated by the commissioner to any state agency, board, commission, or department, a political subdivision or other governmental entity of this state, or the federal government, for the benefit and use of the public in exchange for nonmonetary consideration, if the commissioner determines that the exchange is in the best interest of the state.

(e) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 6, eff. Aug. 31, 1987.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 10, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 461 (H.B. 1138), Sec. 1, eff. June 16, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 1, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 2, eff. June 10, 2015.

Sec. 31.0655. SAVE TEXAS HISTORY AND ADOPT-A-BEACH PROGRAMS. (a) For purposes of Subchapter I, Chapter 659, Government Code:

(1) the land office, for the sole purpose of managing the Save Texas History and Adopt-A-Beach programs, is considered an eligible charitable organization entitled to participate in the state employee charitable campaign; and

(2) a state employee is entitled to authorize a deduction for contributions to the land office for the purposes of managing the Save Texas History and Adopt-A-Beach programs as a charitable contribution under Section 659.132, Government Code, and the land office may use the contributions for the purpose of:

(A) preserving historic maps and documents under the Save Texas History program; or

(B) administering the Adopt-A-Beach program.

(b) The land office may use cash, gifts, grants, donations, or

in-kind contributions the land office receives through the administration of the Save Texas History program to:

(1) preserve, conserve, and promote the land office's records;

(2) provide educational programming and resources on Texas history; and

(3) acquire additional records to complement the land office's records.

Added by Acts 2003, 78th Leg., ch. 36, Sec. 1, eff. May 14, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1213 (H.B. 860), Sec. 1, eff. June 18, 2005.

Acts 2019, 86th Leg., R.S., Ch. 866 (H.B. 2971), Sec. 2, eff. June 10, 2019.

Sec. 31.066. AUTHORITY TO ACCEPT TITLE TO A SITE FOLLOWING COMPLETION OF REMEDIAL ACTION IN ACCORDANCE WITH FEDERAL LAW. (a) If it is necessary for the United States government to acquire real property in this state to conduct remedial action at a site listed on the National Priorities List under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), the commissioner may accept transfer on behalf of the state of the title and interest in the real property from the United States government. The commissioner may accept a transfer following completion of remedial action at a site only on the condition that the state will not incur any liability under that federal law solely by acquiring the title and interest in the real estate.

(b) Following state assumption of ownership, the Texas Commission on Environmental Quality shall provide for maintenance of the real property, including necessary environmental monitoring, consistent with terms of contracts and cooperative agreements with the federal government entered in accordance with the Water Code and Chapter 361, Health and Safety Code.

(c) Any title and interest in real property acquired by the commissioner under this section shall be held in the name of the state. Title or interest acquired under this section does not become a part of the permanent school fund or any other fund created by the

Texas Constitution.

(d) The commissioner may sell any title or interest acquired by the state under this section in accordance with Section 31.158. Proceeds of the sale shall be deposited in the Texas farm and ranch lands conservation fund established under Chapter 84, Parks and Wildlife Code.

Added by Acts 1989, 71st Leg., ch. 507, Sec. 1, eff. June 14, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(75), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.262, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 11, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 2, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 401 (H.B. 1925), Sec. 3, eff. June 10, 2015.

Sec. 31.067. AUTHORITY TO SELL CERTAIN AGENCY REAL PROPERTY. The division is authorized to sell any real property acquired on behalf of the state pursuant to Section 402.025, Government Code. Sale of such real property shall be conducted in accordance with the provisions of Section 31.158 of this code unless otherwise provided by law. Proceeds of sale shall be deposited in the General Revenue Fund as specified in Section 402.025, Government Code.

Added by Acts 1991, 72nd Leg., ch. 633, Sec. 4, eff. Aug. 26, 1991. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 12, eff. June 20, 2003.

Sec. 31.0671. AGENCY AUTHORITY TO SELL OR EXCHANGE REAL PROPERTY. Any state agency or political subdivision may directly sell or exchange real property to which it holds title with the School Land Board for the benefit of the permanent school fund if the sale or exchange is for market value. Section 272.001, Local Government Code, does not apply to an exchange under this section. A political subdivision must provide the governor with advance notice of a proposed sale or exchange under this section, which notice must be sent to the governor at least 30 days before the transaction may be effected. In addition, the governor may disapprove any sale or

exchange of real property by a state agency under this section prior to the sale or exchange. The state agency contemplating a sale or exchange under this section shall submit to the governor a formal request for approval. The state agency may conduct the sale or exchange unless the governor gives the state agency written notice disapproving the sale or exchange. The governor must provide written notice of disapproval under this section not later than the 30th day after the date the governor receives the written request for approval.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 13, eff. June 20, 2003.

Sec. 31.0672. AUTHORITY TO CONDUCT CERTAIN REAL PROPERTY TRANSACTIONS. (a) The division may directly sell to a political subdivision or a development corporation organized under Subtitle C1, Title 12, Local Government Code, any real property owned by the state that the legislature has authorized or the governor has approved for sale under Subchapter E if the commissioner determines the sale is in the best interest of the state.

(b) The governor must approve any sale of real property under this section. Failure of the governor to approve the sale constitutes a veto of the transaction.

(c) A sale of real property under this chapter must be for market value and under other terms and conditions the commissioner determines to be in the best interest of the state.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 13, eff. June 20, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 156 (S.B. 1509), Sec. 1, eff. May 21, 2007.

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.001, eff. September 1, 2009.

Sec. 31.068. STANDING TO ENFORCE RESTRICTIONS. (a) The commissioner and the attorney general have standing to enforce a:

(1) restrictive covenant affecting real property owned by the permanent school fund or a state agency;

(2) restriction expressed in a transfer document or legislative act conveying real property then owned by the state; or

(3) statutory restriction on the sale or lease of real property patented or leased by the state to a navigation district, including a restriction provided by Section 61.116 or 61.117, Water Code.

(b) The attorney general, on the attorney general's own initiative or at the request and on behalf of the commissioner, may bring suit to enforce the rights of the state under this section.

(c) This section does not apply to:

(1) permanent university fund land; or

(2) other real property controlled or administered by the board of regents of The University of Texas System.

Added by Acts 1997, 75th Leg., ch. 613, Sec. 1, eff. June 11, 1997. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 14, eff. June 20, 2003.

Sec. 31.069. INDEFINITE QUANTITY CONTRACTS FOR SERVICES AFTER DECLARED NATURAL DISASTER. (a) The land office shall enter into indefinite quantity contracts with vendors to provide information management services, construction services, including engineering services, and other services the land office determines may be necessary to construct, repair, or rebuild property or infrastructure in the event of a natural disaster.

(b) A contract entered into under Subsection (a) may not expire after May 1 of a calendar year. The terms of a contract under Subsection (a) must:

(1) provide that the contract is contingent on:

(A) the availability of funds;

(B) the occurrence of a natural disaster not later than 48 months after the effective date of the contract; and

(C) delivery of the services to an area of this state declared by the governor or president of the United States under law to be a disaster area as a result of the natural disaster; and

(2) have a term of four years.

(c) The land office shall ensure that it has contracts in place under this section with vendors to provide the services described by Subsection (a) that take effect immediately on the expiration of a contract under this section.

(d) A contract under this section may be funded by multiple

sources including local, state, and federal agencies and the disaster contingency fund established under Section 418.073, Government Code.

(e) If the land office determines that federal funds may be used for a contract under Subsection (a), the land office shall ensure that the contract complies with the requirements of the Federal Acquisition Regulation (48 C.F.R. Chapter 1), or a successor regulation.

(f) In awarding a contract under this section, the land office shall consider and apply any applicable state law and rules of the land office relating to contracting with historically underutilized businesses.

(g) If on September 1, 2019, the land office has indefinite quantity contracts with vendors for the provision of the types of services specified by Subsection (a), the land office is not required to enter into new indefinite quantity contracts that meet the requirements of this section until those existing contracts expire. This subsection expires September 1, 2023.

(h) The land office shall follow the procedures provided by Section 2254.004, Government Code, in contracting for engineering services under this section.

Added by Acts 2019, 86th Leg., R.S., Ch. 577 (S.B. 300), Sec. 1, eff. September 1, 2019.

SUBCHAPTER E. REAL PROPERTY ACCOUNTING AND MANAGEMENT

Sec. 31.153. REAL PROPERTY ACCOUNTING AND RECORDS. (a) All real property owned by the state shall be accounted for by the state agency that possesses the real property.

(b) Each state agency shall maintain a record of each item of real property it possesses. The record must include the following information and shall be furnished to the division:

(1) a description of each item of real property by reference to a volume number, and page or image number or numbers of the official public records of real property in a particular county, or if not applicable, by a legal description;

(2) the date of purchase of the real property, if applicable;

(3) the purchase price of the real property, if applicable;

(4) the name of the state agency holding title to the real

property for the state;

(5) a description of the current uses of the real property and of the projected future uses of the real property; and

(6) a description of each building or other improvement located on the real property.

(c) If the description of real property required under this section is excessively voluminous, the division may direct the agency in possession of the real property to furnish the description only in summary form, as agreed to by the division and the state agency involved.

(d) Each state agency, other than an institution of higher education, annually at the time set by the division, shall furnish the Texas Historical Commission with a photograph and information that specifies and identifies the age of each building:

(1) that was acquired by the agency after the date of the preceding annual submission and that is at least 45 years old on the date of the current submission; or

(2) that is possessed by the agency and has become 45 years old since the date the information was previously submitted.

(e) On request, each state agency shall provide the division with any photographs and information furnished to the Texas Historical Commission under this section.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1049 (S.B. 5), Sec. 6.14, eff. June 17, 2011.

Sec. 31.154. REAL PROPERTY INVENTORY. The division shall review and keep inventory records of all real property owned by the state. The division shall compile the inventory records from the information submitted under Sections 31.153 and 31.155 of this subchapter.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985.
Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Sec. 31.155. SPECIAL STATUS OF CERTAIN AGENCIES. (a) The division is not responsible for maintaining the inventory records, as provided by Section 31.154, of the real property administered by the Texas Department of Transportation, an institution of higher education, the Employees Retirement System of Texas, or the Teacher Retirement System of Texas. The agencies administering the real property shall maintain those records.

(b) The Texas Department of Transportation, on the request of the division, shall submit its real property inventory records to the division. The real property inventory records of an institution of higher education, the Employees Retirement System of Texas, and the Teacher Retirement System of Texas, on the request of the division, but not more than semiannually, shall be submitted to the division for information purposes only. The division shall maintain the inventory records of the former Texas National Research Laboratory Commission, to the extent possible, and is responsible for the disposal of any real property interests held by the former commission as provided by Subchapter G.

(c) The division may review and verify the department's records and make recommendations regarding the department's real property, and the commissioner shall prepare a report involving the department's real property to the same extent that the division and commissioner perform these functions with regard to the records and real property of other state agencies.

(d) The duty under this subchapter of the division to review and verify real property records and to make recommendations regarding real property and of the commissioner to prepare a report involving real property does not apply to:

(1) the real property of an institution of higher education;

(2) the real property that is part of a fund created or specifically authorized by the constitution of this state and that is administered by or with the assistance of the land office;

(3) the real property of the Employees Retirement System of Texas;

(4) the real property of the Teacher Retirement System of Texas; and

Text of subdivision as added by Acts 2013, 83rd Leg., R.S., Ch. 713, Sec. 4, and Ch. 1339, Sec. 3

(5) the real property located in the Capitol complex, as

defined by Section 443.0071, Government Code

Text of subdivision as added by Acts 2013, 83rd Leg., R.S., Ch. 1153, Sec. 37

(5) the real property included in the Capitol Complex as defined by Section 411.061(a)(1), Government Code.

(e) The duties of the division to make recommendations regarding real property and of the commissioner to prepare a report involving real property under this subchapter do not apply to:

(1) the real property of the Texas Historical Commission;

(2) the real property comprising the Alamo;

(3) the real property comprising the French Legation;

(4) the real property comprising the Governor's Mansion;

(5) the real property comprising the Texas State Cemetery, more specifically described as 17.376 acres located at 801 Comal, Lot 5, Division B, City of Austin, Travis County, Texas;

(6) the real property administered by the State Preservation Board; and

(7) highway rights-of-way owned by the Texas Department of Transportation.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1991, 72nd Leg., ch. 582, Sec. 15, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 633, Sec. 6, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 165, Sec. 22(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 823, Sec. 12, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 713 (H.B. 3436), Sec. 4, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1153 (S.B. 211), Sec. 37, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1339 (S.B. 894), Sec. 3, eff. June 14, 2013.

Sec. 31.156. REAL PROPERTY REVIEW. (a) The division shall review the real property inventory of each state agency not less than every four years, and a review shall be made during the calendar year before the agency is scheduled for abolition under the Texas Sunset Act (Chapter 325, Government Code). The division may verify the

accuracy of inventory records provided by an agency.

(b) The division shall:

(1) identify real property owned or controlled by the state that is not being used or is being substantially underused; and

(2) make recommendations to the commissioner regarding the use of the real property or a real estate transaction involving the real property.

(c) The division's recommendations must include an analysis of the highest and best use to which the real property may legally be placed and shall also include alternative uses of the real property addressing potential for commercial or agricultural lease of the real property or any other real estate transaction or use that the division may deem to be in the best interest of the state.

(d) The division shall submit to the commissioner information pertinent to the evaluation of a real estate transaction involving the real property, including an evaluation of any proposals received from private parties that would be of significant benefit to the state and:

(1) if the division recommends a real estate transaction involving the real property, the market value of the real property and the current market conditions; or

(2) if the division does not recommend a real estate transaction involving the real property, evidence of the real property's value in a form determined to be appropriate by the commissioner.

(e) In any year that the division will evaluate real property under the management and control of the Texas Military Department, the division shall notify the department before the division begins the evaluation.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(39), eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1021, Sec. 15, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1416, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 685, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 194 (H.B. 957), Sec. 1, eff. May 27, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1335 (S.B. 1724), Sec. 11, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.12, eff. September 1, 2013.

Sec. 31.157. EVALUATION REPORT. (a) The commissioner shall prepare a draft evaluation report, which shall include the results and findings of the evaluation of the real property owned by the state required under Section 31.156.

(b) The draft report shall be submitted to the Texas Facilities Commission, which shall further evaluate the potential use of the real property by another state agency. The land office shall submit a draft report to each agency that owns or holds in trust property that is the subject of the draft report. The Texas Facilities Commission may make additional recommendations regarding the use of the real property. The state agency that owns or controls real property named in the report may comment on any findings or recommendations made by the commissioner. The Texas Facilities Commission and any state agency that owns or controls real property named in the report shall complete a review of the draft report within 60 days of the receipt of the report and forward all recommendations and comments to the commissioner.

(c) The commissioner shall prepare and issue a final evaluation report that incorporates any recommendations of the Texas Facilities Commission regarding the potential use of the real property by another state agency and any comments from any state agency that owns or controls property named in the report.

(d) If under the Texas Military Department's report submitted as provided by Section 437.154, Government Code, the department determines that real property under the management and control of the department is used for military purposes, the commissioner may not recommend a real estate transaction involving that real property in the final report submitted as provided by Subsection (e).

(e) The final report shall be submitted to the governor, the presiding officers of both houses of the legislature, the Legislative Budget Board, and the governor's budget office not later than September 1 of each year.

(f) Properties reported as not being used or being substantially underused under this section may not be annexed by a

political subdivision of the state without prior written approval of the commissioner.

(g) A state agency that owns or controls real property identified in the evaluation report as not being used or being substantially underused shall notify the land office 30 days before any planned development, acquisition, disposition, lease, or exchange of the real property, including any planned construction of new improvements or a major modification to an existing improvement.

(h) Each state agency owning real property identified in the evaluation report as unused or substantially underused shall provide to the land office, within 30 days of the land office's request, information on the status of those properties. The report shall include a list of:

(1) the individual properties recommended for an alternative use or a real estate transaction by the land office;

(2) the status of those individual properties; and

(3) any plans the agency owning the real property has to convert the use of or dispose of each real property.

(i) The division may solicit proposals and shall accept unsolicited proposals regarding real estate transactions involving real property that would be of significant benefit to the state.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1995, 74th Leg., ch. 484, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 907, Sec. 3, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1021, Sec. 16, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1416, Sec. 2, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 685, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1335 (S.B. 1724), Sec. 12, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1217 (S.B. 1536), Sec. 2.13, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1071 (H.B. 1524), Sec. 125, eff. September 1, 2019.

Sec. 31.1571. GOVERNOR'S REPORT. (a) At any time, the commissioner may make a report to the governor recommending real

estate transactions or other actions involving any real property included in the most recent evaluation report and identified as not used or substantially underused.

(b) After the commissioner recommends a real estate transaction to the governor under this section, the commissioner shall notify the state agency that owns or controls the real property and the Texas Department of Housing and Community Affairs. Not later than the 60th day after the date the written recommendation is received, the state agency and the Texas Department of Housing and Community Affairs may file with the governor their comments on or objections to the recommendation.

(c) If the commissioner recommends a real estate transaction to the governor involving real property identified as not used or substantially underused and the division's analysis of the highest and best use for the real property is determined to be residential, the Texas Department of Housing and Community Affairs shall evaluate the property and identify any property suitable for affordable housing. The Texas Department of Housing and Community Affairs shall submit comments concerning any property suitable for affordable housing and any documents supporting the comments to the governor not later than the 60th day after the date it receives the report prepared under this section.

(d) Any unused or underused state property may be sold or leased, or an easement over the property may be granted, to the United States for the use and benefit of the United States armed forces if the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale, lease, or easement would materially assist the military in accomplishing its mission. A sale, lease, or easement under this subsection must be at market value. The state shall retain all minerals it owns with respect to the land, but it may relinquish the right to use the surface to extract them.

(e) Notwithstanding any other law, real property that the commissioner has reported as unused or substantially underused and recommended for a real estate transaction may not be developed, sold, or otherwise disposed of by the state agency that owns or controls the real property before the earlier of:

(1) the date the governor rejects a recommended real estate transaction involving the real property; or

(2) two years from the date the recommendation is approved,

unless extended by the governor.

(f) If a state agency that owns or controls real property reported as unused or substantially underused intends to dispose of or change the use of the real property prior to the time provided by Subsection (e), the governor may require a general development plan for future use of the real property or any other information. At any time, the governor may request that the state agency provide its general development plan or any other information to the land office for evaluation and may consult with the commissioner. The plan shall be submitted no later than 30 days prior to the time that the real estate transaction would be approved by operation of law if not disapproved by the governor. The governor may take such plan into consideration in determining whether to reject the commissioner's recommendation.

(g) The commissioner may conduct the transaction unless the governor gives the commissioner written notice disapproving the recommendation. The governor must provide written notice of disapproval under this subsection not later than the 90th day after the date the governor receives the commissioner's written recommendation.

Added by Acts 1995, 74th Leg., ch. 484, Sec. 2, eff. Sept. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 14.01(a), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 149, Sec. 10, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 1091, Sec. 15, eff. June 20, 2003. Reenacted and amended by Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.004, eff. September 1, 2005.

Sec. 31.1573. REAL ESTATE TRANSACTIONS AUTHORIZED BY GOVERNOR. (a) The land office shall take charge and control of real property as necessary to conduct and close a real estate transaction authorized by the governor.

(b) The expenses incurred by the land office in conducting a real estate transaction, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the transaction before the proceeds are deposited. The land office may adopt rules relating to the payment of reasonable brokerage fees.

(c) Unless otherwise dedicated by the Texas Constitution, the proceeds of the transaction shall be deposited:

(1) to the credit of the Texas capital trust fund if the agency is eligible under Chapter 2201, Government Code, to participate in that fund;

(2) in the state treasury to the credit of the affected agency if the agency is not eligible under Chapter 2201, Government Code, to participate in the Texas capital trust fund; or

(3) notwithstanding Subdivisions (1) and (2), as otherwise directed under the procedures of Chapter 317, Government Code.

(d) The grant of an interest in real property owned by the state under this section must:

(1) comply with the requirements of Section 31.158 to the extent the requirements do not conflict with a recommendation in the governor's report under Section 31.1571; and

(2) be conveyed by an instrument signed by the commissioner and, if the transaction was conducted under Section 31.158(c)(7), by the governor.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 16, eff. June 20, 2003.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 1, eff. September 1, 2015.

Sec. 31.158. REAL ESTATE TRANSACTIONS AUTHORIZED BY LEGISLATURE. (a) If the legislature authorizes a real estate transaction involving real property owned by the state, the division shall take possession and control of the real property and shall negotiate and close such real estate transaction on behalf of the state. In performing such duties, the division shall act on behalf of the state agency which owns or controls the subject state real property. Proceeds from the real estate transaction shall be deposited in the Texas capital trust fund unless the proceeds are dedicated by the constitution of this state to another fund or unless the enabling legislation ordering the real estate transaction provides otherwise.

(b) The division may not take possession and control under this section of real property administered by a state agency that, under Chapter 2201, Government Code, is ineligible to benefit from the Texas capital trust fund.

(c) Unless the enabling legislation or general law authorizing

the real estate transaction specifies a different procedure, the division shall transact the sale or lease of state real property in the following manner:

(1) The sale or lease shall be by sealed bid, by public auction, or as provided by Subsection (d); provided, however, the School Land Board shall have the first option to purchase such real property pursuant to Section 31.159 of this code. Subdivisions (2)-(7) apply only to a sale or lease by sealed bid or public auction.

(2) Notice of the sale or lease shall be published at least 30 days prior to the date of sale or lease in at least three issues of four daily newspapers in the state. One of the papers must be of general circulation in the county where the real property is located.

(3) The notice shall state that real property is to be offered for sale or lease on a certain date and that lists describing the real property and terms of sale or lease can be obtained from the division.

(4) No bid may be accepted that does not meet the minimum value established by the commissioner, which shall not be less than market value.

(5) The division may reject any and all bids, but if the division elects not to reject any and all bids, it is required to accept the best bid submitted.

(6) If the award of a bid does not result in a final transaction with the bidder, the land office may solicit proposals, negotiate, and sell, exchange, or lease the real property, provided that the sales price may not be less than market value.

(7) If, after proper notice has been posted, no bids meeting the minimum requirements are received at the appointed time and place for the sale or lease, the division may solicit proposals and negotiate the sale, exchange, or lease of the real property to any person, provided that the sales price may not be less than the market value of the real property. The governor must approve any sale or lease of real property negotiated under this section. Failure of the governor to approve the sale or lease constitutes a veto of the transaction.

(8) Each grant of an interest in real property made pursuant to this section shall be made by an instrument signed by the commissioner and, if the governor's approval is required, by the governor.

(9) The expenses incurred by the division in conducting the

sale, exchange, or lease, including the payment of reasonable brokerage fees, may be deducted from the proceeds of the sale prior to deposit in the Texas capital trust fund or other appropriate depository account. The division may promulgate rules relating to the payment of reasonable brokerage fees.

(10) These procedures will not apply to sales or leases of real property that are possessed by an agency that under Chapter 2201, Government Code, is ineligible to use the Texas capital trust fund or real property which belongs to the permanent school fund.

(11) Prior to the actual sale or lease, the state representative and state senator in the district where the subject real property is located shall be notified of all efforts to sell or lease the real property and shall be provided with copies of all brokerage contacts relating to the sale or lease.

(d) The division may contract for the services of a real estate broker or a private brokerage or real estate firm in the course of a real estate transaction under this section if the commissioner determines contracting for those services is in the best interest of the state.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1989, 71st Leg., ch. 839, Sec. 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 633, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(5), 12.01(a), eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 685, Sec. 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1091, Sec. 17, eff. June 20, 2003.

Sec. 31.1581. TRANSFER OF REAL PROPERTY FOR USE AS AFFORDABLE HOUSING. (a) If the legislature authorizes or the governor approves the transfer of title to real property to an entity for use as affordable housing, the division shall take possession and control of the real property and shall conduct the transaction as provided by the policy adopted under Subsection (b).

(b) The division shall adopt a policy regarding the method of transferring title to real property designated as suitable for affordable housing to an entity for use as affordable housing. The policy must include monitoring and enforcement provisions to ensure that the real property is used for affordable housing.

Acts 2001, 77th Leg., ch. 685, Sec. 3, eff. Sept. 1, 2001.

Redesignated from Natural Resources Code Sec. 31.158(d), (e) and amended by Acts 2003, 78th Leg., ch. 1091, Sec. 17, eff. June 20, 2003.

Sec. 31.1582. SALE OF CERTAIN MINERAL INTERESTS. (a) If the General Land Office receives from a landowner an offer to buy the state's interest in the mineral estate in real property to which the landowner holds title, the General Land Office may sell to the landowner, for fair market value, any fractional mineral interest held by the state that:

(1) is a fractional mineral interest of 1/32 or less; and

(2) is severed from a parcel of land that:

(A) is 80 acres or less; and

(B) is located in a county with a population of less than 11,000.

(b) This section does not apply to land under the management and control of the board of regents of a public or private institution of higher education.

Added by Acts 2007, 80th Leg., R.S., Ch. 491 (S.B. 214), Sec. 1, eff. June 16, 2007.

Sec. 31.1585. CERTAIN PROCEEDS. Notwithstanding any other law, proceeds from the sale of real property purchased with general revenue funds that was recommended for sale by the division and not disapproved for sale by the governor during the calendar years 1995 through 2002 shall be deposited in the unobligated portion of the general revenue fund and may only be appropriated to the state agency that possessed the property at the time of the sale for use by the state agency in performing its duties.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 18, eff. June 20, 2003.

Sec. 31.159. FIRST OPTION TO PURCHASE. (a) The School Land Board has a first option to purchase real property authorized for sale by the legislature or the governor. The board may exercise its option by tendering cash for market value as mutually agreed on by the board and the state agency that owns the real property, but the

purchase price may not be less than market value. For purposes of this section, the division may request more than one appraisal to determine market value. If the parties cannot agree on a value, the board and the state agency that owns the real property shall follow the procedures provided by Subsections (d) and (e). The board may not pay more than market value.

(b) The division shall inform the School Land Board of the proposed sale and its first option to purchase state agency real property. If the board decides to exercise its option under this section, the division shall appoint an appraiser not later than the 30th day after the date the board notifies the division of its decision.

(c) The School Land Board must complete the cash purchase not later than the 120th day after the date the board exercises its first option to purchase. If the School Land Board fails to complete the purchase within the time permitted, the division may extend the time for completing the purchase or disposing of the real property as authorized by the legislature or approved by the governor.

(d) If the state agency that owns the real property disputes the market value, the School Land Board shall request a second appraisal. If the School Land Board fails to request a second appraisal, the division shall appoint a second appraiser not later than the 21st day after the date the state agency notifies the School Land Board that it disputes the market value. On completion of the second appraisal, the two appraisers shall meet promptly and attempt to reach agreement on the market value. If the two appraisers fail to reach agreement within 10 days of the meeting, the land office shall request a third appraiser to reconcile the two previous appraisals. The determination of value by the third appraiser may not be less than the lower or more than the higher of the first two appraisals. The market value determined by the third appraiser is final and binding on all parties.

(e) The division may appoint an appraiser employed by the land office for the performance of any one of the required appraisals. Any other appraiser employed under this section must be selected in accordance with Subchapter A, Chapter 2254, Government Code. The party requesting the appraisal shall award the appraisal services contract to the provider of professional services after considering the factors identified in Chapter 2254, Government Code. The division shall pay the expenses of appraisal.

Added by Acts 1985, 69th Leg., ch. 102, Sec. 2, eff. May 15, 1985. Amended by Acts 1985, 69th Leg., ch. 270, Sec. 5, eff. June 5, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 11, eff. Aug. 31, 1987; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(47), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 17.19(18), eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1091, Sec. 19, eff. June 20, 2003.

Sec. 31.161. DEVELOPMENT PLAN. (a) If the state intends to conduct a sale or lease for nongovernmental purposes of real property belonging to the state, to the permanent school fund, or to any of the dedicated funds of the state, other than the permanent university fund, or any other real property subject to the administration and control of the board of regents of The University of Texas System, the division may promulgate a development plan on the real property.

(b) The purpose of a development plan is to conserve and enhance the value of real property belonging to the state, taking into consideration the preservation of the health, safety, and general welfare of the communities in which the real property is situated.

(c) The plan shall address local land use planning ordinances, which may include the following:

(1) allocation and location of specific uses of the real property, including residential, commercial, industrial, recreational, or other appropriate uses;

(2) densities and intensities of designated land uses;

(3) the timing and rate of development;

(4) timely delivery of adequate facilities and services, including water, wastewater collection and treatment systems, parks and public recreational facilities, drainage facilities, school sites, and roads and transportation facilities; or

(5) needed zoning and other land use regulations.

(d) The plan shall comply with existing rules, regulations, orders, or ordinances for real property development to the extent such rules, regulations, orders, or ordinances are not detrimental to the interests of the state as determined by the special board of review.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 20, eff. June 20,

2003.

Sec. 31.1611. PUBLIC HEARING BEFORE PREPARATION OF DEVELOPMENT PLAN. (a) If the division is requested to prepare a development plan under Section 31.161, the division shall notify the local government to which the plan will be submitted under Section 31.162 of the division's intent to prepare a development plan. The division shall provide the local government with information relating to:

(1) the location of the real property to be offered for sale or lease;

(2) the highest and best use of the real property as provided in the division's report under Section 31.157; and

(3) the process for preparing the development plan under Section 31.161 and the process provided under Sections 31.165 and 31.166 for the special board of review.

(b) Not later than the 30th day after the date the local government receives the notice provided under Subsection (a), the local government may request the division to hold a public hearing to solicit public comment. If requested by the local government, the division shall hold a public hearing. The local government shall provide notice of the hearing to real property owners in at least the same manner that notice is provided for adopting zoning regulations or subdivision requirements in the local government's jurisdiction. The division shall set the agenda for the hearing, which must be completed no later than the 120th day after the date notice is provided under Subsection (a).

(c) If the local government does not request a public hearing under Subsection (b), the commissioner may hold a hearing to solicit public comment. The division shall provide notice of the hearing in the same manner that a local government is required to provide notice under Subsection (b). The commissioner shall set the agenda for the hearing and must complete the hearing not later than the 120th day after the date the notice is provided under Subsection (a).

(d) A public hearing under this section may include:

(1) a presentation by the division relating to the division's classification of the real property as unused or substantially underused and the division's recommendation of the highest and best use to which the real property may legally be placed;

(2) a presentation by the local government relating to relevant local plans, development principles, and ordinances that may affect the development of the real property; and

(3) oral comments and presentations of information by and written comments received from other persons relating to the development of the real property.

(e) The division shall prepare a summary of the information and testimony presented at a hearing conducted under this section and may develop recommendations based on the information and testimony. The division shall prepare and deliver a report to the commissioner summarizing the information and testimony presented at the hearing and the views presented by the state, the affected local governments, and other persons who participated in the hearing process. The commissioner shall review the division's report and may instruct the division to incorporate information based on the report in preparing the development plan under Section 31.161.

(f) The commissioner may adopt rules to implement this section. The division shall administer the process provided by this section.

Added by Acts 1999, 76th Leg., ch. 903, Sec. 1, eff. June 18, 1999. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 21, eff. June 20, 2003.

Sec. 31.162. SUBMISSION OF THE PLAN TO AFFECTED LOCAL GOVERNMENT. (a) The plan shall be submitted to any local government having jurisdiction over the real property in question for consideration.

(b) The local government shall evaluate the plan and either accept or reject the plan no later than the 120th day after the date the division submits the plan.

(c) The plan may be rejected by the local government only on grounds that it does not comply with local ordinances and land use regulations, including but not limited to zoning and subdivision ordinances.

(d) If the plan is rejected, the local government shall specifically identify any ordinance with which the plan conflicts and propose specific modifications to the plan that will bring it into compliance with the local ordinance.

(e) If the plan is rejected by the affected local government,

the division may modify the plan to conform to the ordinances specifically identified by the local government and resubmit the plan for approval, or the commissioner may apply for necessary rezoning or variances from the local ordinances.

(f) Failure by the local government to act within the 120-day period prescribed by Subsection (b) will be deemed an acceptance by the local government of the plan.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 22, eff. June 20, 2003.

Sec. 31.163. REZONING. (a) If the plan would require zoning inconsistent with any existing zoning or other land use regulation, the division or its designated representative may at any time submit a request for rezoning to the local government with jurisdiction over the real property in question.

(b) The rezoning or variance request shall be submitted in the same manner as any such request is submitted to the affected local government; provided, however, the local government must take final action on the request no later than the 120th day after the date the request for rezoning or variance is submitted.

(c) Failure by the local government to act within the 120-day period prescribed by Subsection (b) will be deemed an approval of the rezoning request by the local government.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 23, eff. June 20, 2003.

Sec. 31.164. FEES AND ASSESSMENTS. (a) The local government may impose no application, filing, or other fees or assessments on the state for consideration of the plan or the application for rezoning or variance submitted by the state.

(b) The local government may not require the submission of architectural, engineering, or impact studies to be completed at state expense before considering the plan or application for rezoning or variance.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987.

Sec. 31.165. SPECIAL BOARD OF REVIEW. (a) If the local government denies the rezoning request, the matter may be appealed to a special board of review consisting of the following members:

(1) the members of the School Land Board;

(2) the chairman of the governing board of the agency or institution possessing the real property or his or her designated representative;

(3) the mayor of the city or town within whose corporate boundaries or extraterritorial jurisdiction the real property is located; and

(4) the county judge of the county within which the real property is located.

(b) The commissioner shall serve as chairman of the special board of review.

(c) If the plan involves real property belonging to the permanent school fund, the special board of review shall consist of the members of the School Land Board and the local officials, with the commissioner serving as chairman.

(d) If the real property is not located within the corporate boundaries or the extraterritorial jurisdiction of a city or town, the board shall consist of the members of the School Land Board, the agency chairman, and the county judge, with the commissioner serving as chairman.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 24, eff. June 20, 2003.

Sec. 31.166. HEARING. (a) The special board of review shall conduct one or more public hearings to consider the proposed development plan.

(b) Hearings shall be conducted in accordance with rules promulgated by the land office for conduct of such special review.

(c) If real property is located in more than one city or town, the hearings on any single tract of real property may be combined.

(d) Any political subdivision in which the tract in question is

located and the appropriate central appraisal district shall receive written notice of board hearings at least 14 days prior to the hearing.

(e) At least one hearing shall be conducted in the county where the real property is located.

(f) If after the hearings, the special board of review determines that local zoning requirements are detrimental to the best interest of the state, it shall issue an order establishing a development plan to govern the use of the real property as provided in this section.

(g) Development of the real property shall be in accordance with the plan and must comply with all local rules, regulations, orders, or ordinances except as specifically identified in an order of the special board of review issued pursuant to Subsection (f) of this section. In the event that substantial progress is not made toward development of the tract within five years of the date of adoption by the special board of review, local development policies and procedures shall become applicable to development of the tract, unless the special board of review promulgates a new plan.

(h) The hearing shall not be considered a contested case proceeding under Chapter 2001, Government Code and shall not be subject to appeal thereunder.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1091, Sec. 25, eff. June 20, 2003.

Sec. 31.167. BINDING EFFECT OF DEVELOPMENT PLAN. (a) Except as provided by this subsection, a development plan promulgated by the special board of review and any plan accepted by a local government shall be final and binding on the state, its lessees, successors in interest and assigns, and affected local governments or political subdivisions unless revised by the special board of review. If the division does not receive a bid or auction solicitation for the real property subject to the development plan, the division, at the direction of the commissioner, may revise the development plan to conserve and enhance the value and marketability of the real property.

(b) A local government, political subdivision, owner, builder,

developer, or any other person may not modify the development plan without specific approval by the special board of review.

(c) The special board of review must file a copy of the development plan in the deed records of the county in which the real property is located. Revisions to the development plan are governed by local development policies and procedures if the revisions are requested after the later of:

(1) the 10th anniversary of the date on which the development plan was promulgated by the special board of review; or

(2) the date on which the state no longer holds a financial or property interest in the real property subject to the plan.

(d) After issuance of an order establishing a development plan for real property that is not part of the permanent school fund or in which the permanent school fund does not have a financial interest, the composition of any future special board of review called to consider revision of that order must consist of:

(1) the presiding officer of the governing board of the agency or institution possessing the real property or the presiding officer's designated representative;

(2) two members who are employed by the agency or institution possessing the real property, appointed by the presiding officer of the governing board of the agency or institution or the presiding officer's designated representative;

(3) the county judge of the county in which the real property is located; and

(4) if the real property is located within the corporate boundaries or extraterritorial jurisdiction of a municipality, the mayor of the municipality.

(e) The member described by Subsection (d)(1) serves as the presiding officer of the special board of review.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 13, eff. Aug. 31, 1987.
Amended by Acts 1999, 76th Leg., ch. 903, Sec. 2, eff. June 18, 1999; Acts 2003, 78th Leg., ch. 1091, Sec. 26, eff. June 20, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 3, eff. June 19, 2009.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 2, eff. September 1, 2015.

SUBCHAPTER G. SUPER COLLIDER SITE

Sec. 31.307. DEDICATION OF ROADS. The commissioner may dedicate roads located on the real property used as the site for the superconducting super collider research facility to the county in which the roads are located if the commissioner believes that the dedication will enhance the value of remaining state real property.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 27, eff. June 20, 2003.

Sec. 31.308. CONVEYANCE OF SURFACE AND SUBSURFACE ESTATE. (a) In this section, "subsurface estate" means the subsurface acquired by the state to construct or maintain the underground accelerator partially built or proposed to be built as part of the superconducting super collider research facility.

(b) The commissioner shall convey the state's interest in the subsurface estate underlying the surface estate of real property used as the site for the superconducting super collider research facility if the owner of the surface estate pays a sum equal to the market value of the subsurface estate as determined by the commissioner. After the state conveys its interest in the subsurface estate as provided by this subsection, title to the subsurface estate is reunited with the title to the surface estate.

(c) Unless the instrument of conveyance provides otherwise, a conveyance of the surface estate of real property by the state under this subchapter includes the conveyance of the subsurface estate to the extent of the state's interest in the subsurface estate.

(d) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 2, eff. Sept. 1, 1997. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 28, eff. June 20, 2003.

Sec. 31.309. PREFERENCE RIGHT TO PURCHASE CERTAIN REAL PROPERTY. (a) A person or the person's heirs who conveyed real property to the state for use by the superconducting super collider research facility has a preference right to purchase the same tract

of real property previously conveyed before the tract is offered for sale by the state to any other person.

(b) A person who has a preference right under this section must pay at least the market value for the real property as determined by an appraisal conducted by the land office.

(c) This section does not apply to a subsurface estate as defined by Section 31.308.

(d) The commissioner may adopt rules necessary to implement this section.

Added by Acts 1997, 75th Leg., ch. 345, Sec. 3, eff. Jan. 1, 1998. Amended by Acts 2003, 78th Leg., ch. 1091, Sec. 29, eff. June 20, 2003.

SUBCHAPTER H. USE OF STATE ENERGY RESOURCES

Sec. 31.401. NATURAL GAS ACQUISITION CONTRACTS. (a) The land office shall review and must approve any contract entered into by a state agency for the acquisition of an annual average of 100 MCF per day or more of natural gas used to meet its energy requirements.

(b) Before approving a contract described by Subsection (a) of this section, the land office shall ensure that the agency, to meet its energy requirements, is using, to the greatest extent practical, natural gas produced from land leased from:

(1) the school land board;

(2) a board for lease other than the Board for Lease of University Lands; or

(3) the surface owner of Relinquishment Act land.

(c) If the land office is able to substitute a contract using in-kind royalty gas from state-owned lands or using other gas for a contract under which a state agency acquires or proposes to acquire its natural gas supplies, the commissioner shall inform the comptroller each month of the amount of savings attributable to the substitution.

(d) In this section, "state agency" has the meaning assigned by Subchapter A, Chapter 572, Government Code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 3.01, eff. Sept. 1, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(42), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1499, Sec. 1.43, eff. Sept. 1, 1999.

Sec. 31.402. RULES. The commissioner shall adopt any rules necessary to carry out this subchapter, including rules regarding review and approval of natural gas acquisition contracts under Section 31.401 of this code.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 3.01, eff. Sept. 1, 1991.

SUBCHAPTER I. THE ALAMO COMPLEX

Sec. 31.450. FINDINGS; MEMORANDUM OF UNDERSTANDING. (a) The legislature finds that:

(1) the Alamo has played an important role in the history of this state and continues to be a symbol of liberty and freedom for this state;

(2) this state wants to honor the individuals whose lives were lost at the Alamo;

(3) the entire history of the Alamo, from the time the Alamo was established as a mission until the present, should be recognized; and

(4) the Alamo is a world-class destination that provides a place of remembrance and education.

(b) The land office shall enter into a memorandum of understanding with the City of San Antonio to coordinate the planning and development of improvements to the Alamo complex and the area immediately surrounding the complex.

Added by Acts 2015, 84th Leg., R.S., Ch. 1101 (H.B. 2968), Sec. 1, eff. September 1, 2015.

Sec. 31.451. PRESERVATION AND MAINTENANCE OF ALAMO. (a) The Alamo complex is under the jurisdiction of the land office. The land office is responsible for the preservation, maintenance, and restoration of the Alamo complex and its contents and the protection of the historical and architectural integrity of the exterior, interior, and grounds of the Alamo complex.

(b) Any power or duty related to the Alamo complex formerly vested in any other state agency or entity is vested solely in the

land office.

(c) Notwithstanding any other law, the land office is not required to comply with state purchasing law in carrying out its duties under this subchapter.

(d) The land office may participate in the establishment of and partner with a qualifying nonprofit organization the purposes of which include raising funds for or providing services or other benefits for the preservation and maintenance of the Alamo complex. The land office may contract with the organization for the performance of any activity.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.452. ASSISTANCE FROM STATE PRESERVATION BOARD. The land office may consult with the State Preservation Board in the performance of duties under this subchapter. On request of the land office, the State Preservation Board shall assist the land office with the land office's duties relating to the Alamo complex.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.453. AGREEMENT WITH DAUGHTERS OF THE REPUBLIC OF TEXAS. (a) The land office shall enter into an agreement with the Daughters of the Republic of Texas for the management, operation, and financial support of the Alamo complex.

(b) The agreement at a minimum must:

(1) detail the expectations and goals of the land office and the Daughters of the Republic of Texas, including the transfer of any state money held in trust for the Alamo by the Daughters of the Republic of Texas and the property described in Subsection (d);

(2) outline the management and operation of the Alamo complex;

(3) establish management standards;

(4) provide for oversight by the land office;

(5) address funding and payment for costs;

(6) address equipment;

(7) establish insurance requirements;

(8) address compliance with local, state, and federal building and operation laws;

(9) address construction, maintenance, and repair;

(10) establish the term of the agreement;

(11) require submission of financial information from the Daughters of the Republic of Texas, excluding chapters of the organization;

(12) address ownership by this state of the Alamo complex and its contents;

(13) include a dispute resolution process;

(14) provide that the laws of this state govern the agreement; and

(15) include notice requirements.

(c) The land office may enter into the agreement required by Subsection (a) only if the Daughters of the Republic of Texas is a properly formed nonprofit corporation in this state in accordance with Section 2.008, Business Organizations Code, and is exempt from income taxation under Section 501(c)(3), Internal Revenue Code of 1986.

(d) All property received by the Daughters of the Republic of Texas in its capacity as custodian or trustee of the Alamo for the benefit of the Alamo is subject to the requirements of this subchapter and the agreement required by this section.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.454. THE ALAMO COMPLEX ACCOUNT. (a) The Alamo complex account is a separate account in the general revenue fund.

(b) The account consists of:

(1) transfers made to the account;

(2) fees and other revenue from operation of the Alamo complex;

(3) grants, donations, and bequests from any source designated for the benefit of the Alamo complex; and

(4) income earned on investments of money in the account.

(c) The land office may accept a gift, grant, or bequest of money, securities, services, or property to carry out any purpose related to the preservation and maintenance of the Alamo complex,

including funds raised or services provided by a volunteer or volunteer group to promote the work of the land office. All proceeds under this subsection shall be deposited to the credit of the account.

(d) Appropriations to the land office for the preservation, operation, or maintenance of the Alamo complex shall be deposited to the credit of the account.

(e) The land office may use money in the account only to administer this subchapter, including to support the preservation, repair, renovation, improvement, expansion, equipping, operation, or maintenance of the Alamo complex or to acquire a historical item appropriate to the Alamo complex.

(f) Any money in the account not used in a fiscal year remains in the account. The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.

Sec. 31.455. ALAMO PRESERVATION ADVISORY BOARD. (a) The land office may establish an Alamo Preservation Advisory Board to provide advice, proposals, and recommendations to:

(1) promote the development of a world-class site to educate visitors on the history and importance of the Alamo in this state's fight for independence and to honor the people who lost their lives at the Alamo;

(2) promote and support the Alamo complex;

(3) provide the resources and support necessary to advance the understanding and education of current and future generations on the historical significance and factual record of the Alamo complex;

(4) inspire virtues of honor and Texas pride;

(5) preserve the memory and achievement of individuals who served at the Alamo and provide a fitting tribute to the heroism of the people who paid the ultimate sacrifice for freedom and of the noble men and women of this state who have served in the armed forces or died while serving in the armed forces to ensure the freedom of the people of this state;

(6) provide educational and museum facilities for the preservation, perpetuation, appropriate publication, and display of

manuscripts, books, relics, pictures, oral histories, and all other items and information related to the history of the Alamo complex and of this state that preserve the historical character of the Alamo shrine; and

(7) promote, counsel, and provide support to governmental and private organizations that are committed to objectives similar to the objectives described in this subsection.

(b) The advisory board is composed of:

(1) the commissioner or the commissioner's designee, who serves as the presiding officer of the advisory board;

(2) a designee appointed by the governor;

(3) a representative of the Alamo Endowment, appointed by the commissioner;

(4) the director of the Alamo;

(5) the Alamo curator;

(6) one representative of the Texas Historical Commission;

(7) a designee appointed by the county judge of Bexar County;

(8) a designee appointed by the mayor of the City of San Antonio;

(9) a designee appointed by the commissioner representing the local travel and tourism industry and the businesses and landholders from the area immediately surrounding the Alamo complex;

(10) one member of the house of representatives appointed by the speaker of the house of representatives; and

(11) one senator appointed by the lieutenant governor.

(c) Subject to approval by the advisory board, the advisory board may include nonvoting members, who as individuals or as representatives of institutions, are interested in the purposes for which the advisory board was established.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1046 (H.B. 3726), Sec. 2, eff. September 1, 2011.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 1101 (H.B. 2968), Sec. 2, eff. September 1, 2015.

CHAPTER 32. SCHOOL LAND BOARD
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.001. DEFINITIONS. In this chapter:

(1) "Board" means the School Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Land" means:

(A) land dedicated to or acquired on behalf of the permanent school fund and the asylum funds under the constitution and laws of this state;

(B) the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state;

(C) the mineral estate in river beds and channels; and

(D) land owned by the state or held in trust for the use and benefit of the state or of a department, board, or agency of the state.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 4, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 642, Sec. 1, eff. Aug. 26, 1991. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 1, eff. June 19, 2009.

Sec. 32.002. APPLICATION OF CHAPTER. (a) This chapter does not apply to:

(1) land dedicated by the constitution or a law of this state to The University of Texas System, land donated by a will or instrument in writing or otherwise to The University of Texas System, as trustee, for a scientific, educational, or other charitable or public purpose, or any other land under the control of the Board of Regents of The University of Texas System;

(2) land whose title is vested in the state for the use and benefit of any part of The Texas A&M University System or land under the control of the Board of Regents of The Texas A&M University System;

(3) minerals subject to lease under Subchapter F, Chapter 52, commonly known as the Relinquishment Act, and Subchapters B and C, Chapter 53;

(4) land owned by the Parks and Wildlife Department; or

(5) land owned by the Texas Board of Criminal Justice.

(a-1) Oil and gas underlying land that is owned by this state, was acquired to construct or maintain a highway, road, street, or alley, is located in a producing area, and is subject to an oil or gas lease may be pooled or unitized only prospectively and is subject to Sections 32.201, 32.202, and 32.203.

(b) For purposes of Subsection (a-1), land is located in a producing area if the closest boundary line of the surface of such land is within 2,500 feet of a well capable of producing oil or gas in paying quantities.

(c) Oil and gas underlying land not located within a producing area or that is leased for the specific purpose of drilling a horizontal well may be leased under the provisions of Section 32.201 of this code.

(d) If title to land subject to Subchapter F, Chapter 52 of this code, commonly known as the Relinquishment Act, is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 52 of this code for the leasing of unsold public school land.

(e) If title to land subject to Subchapter C, Chapter 53, of this code is acquired by a department, board, or agency of the state, the land shall be leased as provided by Chapter 53 of this code for the leasing of unsold surveyed public school lands.

(f) This chapter does not authorize drilling or other operations on the surface of land during the period in which the land is used by this state as a highway, road, street, or alley.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 5, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(e), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 642, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 897, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(50), eff. Sept. 1, 1995.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 2, eff. June 19, 2009.

Sec. 32.003. APPLICATION OF SUNSET ACT. The School Land Board is subject to Chapter 325, Government Code (Texas Sunset Act).

Unless continued in existence as provided by that chapter, the board is abolished September 1, 2031.

Added by Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 3, eff. June 19, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 4.04, eff. June 17, 2011.
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 1, eff. September 1, 2019.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 32.011. CREATION OF BOARD. There is created a board to be known as the School Land Board.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.012. MEMBERS OF THE BOARD. (a) The board is composed of:

(1) the commissioner; and

(2) four citizens of the state appointed by the governor with the advice and consent of the senate.

(b) Two citizens appointed by the governor must be selected from lists of nominees submitted by the State Board of Education. The State Board of Education shall submit to the governor a list of six nominees for a vacant position described by this subsection. The governor may request that the State Board of Education submit a second list of six nominees if the governor does not choose to appoint a nominee from the first list.

(c) At least one of the citizens appointed under Subsection (a) must be a resident of a county with a population of less than 200,000. The governor and the State Board of Education shall collaborate to ensure that the membership of the board complies with this subsection.

(d) Each appointment made by the governor shall be made in accordance with and subject to the provisions of the Texas Constitution authorizing the filling of vacancies in state offices by appointment of the governor.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 2, eff. September 1, 2019.

Sec. 32.0121. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 7, eff. Sept. 1, 1985.

Sec. 32.0122. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 305 of the Government Code, by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 8, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(20), eff. Sept. 1, 1987.

Sec. 32.0123. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry may not be a member or employee of the board, nor may a person who cohabits with or is the spouse of an officer, managerial employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 9, eff. Sept. 1, 1985.

Sec. 32.013. TERMS OF APPOINTED MEMBERS. The appointed members of the board serve for terms of two years.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 3, eff. September 1, 2019.

Sec. 32.014. CHAIRMAN OF THE BOARD. The commissioner serves as chairman of the board.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.015. PER DIEM AND REIMBURSEMENT. Each citizen member of the board is entitled to receive a per diem allowance for each day spent in performing his duties and as reimbursement for actual and necessary travel expenses incurred in performing his duties the amount provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.016. BOARD MEETINGS. (a) When necessary, the board shall meet on the first and third Tuesdays of each month at a time and location to be designated by the board.
(b) Subject to recesses at the discretion of the board, meetings of the board shall continue until the board has completed its docket.
(c) The chairman of the board may call special meetings of the board at any time the chairman thinks necessary by giving the other members notice.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 139, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 4, eff. June 19, 2009.

Sec. 32.0161. ANNUAL JOINT MEETING. (a) The board and the State Board of Education shall hold an annual joint public meeting to discuss the allocation of the assets of the permanent school fund and the investment of the money in the fund.

(b) Each member of the board must attend the annual joint public meeting, unless the member's absence is excused by majority vote of the board.

(c) Each member of the State Board of Education must attend the annual joint public meeting, unless the member's absence is excused by majority vote of the State Board of Education. If the State Board of Education delegates powers and duties relating to the investment of the permanent school fund to a committee of the State Board of Education, only a majority of the committee members must attend the meeting.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 4, eff. September 1, 2019.

Sec. 32.017. SECRETARY OF THE BOARD. (a) The board shall select a secretary from persons nominated by the commissioner.

(b) The person selected as secretary shall be approved by a majority of the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.0171. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 32.012 of this code for appointment to the board;

(3) violates a prohibition established by Section 32.0122

or 32.0123 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

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

(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 10, eff. Sept. 1, 1985.

Sec. 32.018. EMPLOYMENT OF GEOLOGIST AND MINERALOGIST. The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on land under the board's jurisdiction and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 11, eff. Sept. 1, 1985.

Sec. 32.019. BOARD EMPLOYEES. (a) The commissioner may employ additional employees necessary for the discharge of the duties of the board.

(b) Employees of the board shall be considered employees of the land office, and civil and criminal laws regulating the conduct and relations of employees of the land office apply to employees of the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.0191. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policymaking responsibilities of the board and the management responsibilities of the commissioner and the staff of the land office.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 5, eff. September 1, 2019.

Sec. 32.020. MINUTES OF BOARD. The board shall keep minutes which shall include a record of its proceedings and a docket on which the secretary shall enter matters to be considered by the board.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.021. RECORDS AND PROCEEDINGS AS ARCHIVES. The records and proceedings of the board shall be records and archives of the land office.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.022. INSPECTION OF MINUTES AND DOCKET. (a) On payment of the fees prescribed by law for examination of other land office records, the minutes and docket shall be subject to inspection by any citizen of the state who desires to make the examination.

(b) An examination made under this section shall be made in the presence of the secretary of the board or a clerk designated by law.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.025. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 13, eff. Sept. 1, 1985.

Amended by Acts 1989, 71st Leg., ch. 584, Sec. 6, eff. Sept. 1, 1989.

Sec. 32.026. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 14, eff. Sept. 1, 1985.

Sec. 32.027. MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the board's investment programs and strategies;

(4) the permanent school fund, including a comprehensive overview of the law governing the fund;

(5) the scope of and limitations on the rulemaking authority of the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policymaking body in performing their duties; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the

person qualifies for office.

(d) The commissioner shall create a training manual that includes the information required by Subsection (b).

(e) The commissioner shall distribute a copy of the training manual annually to each appointed member of the board. Each of those members shall sign and submit to the commissioner a statement acknowledging that the member received and has reviewed the training manual.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 6, eff. September 1, 2019.

Sec. 32.028. COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 7, eff. September 1, 2019.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 32.061. BOARD'S GENERAL DUTIES. Except as provided by Subchapter G, Chapter 51, of this code, the board shall:

(1) set the dates to open received bids for the sale of land, for the lease of land for prospecting or exploring for, mining, producing, storing, caring for, transporting, preserving, selling, or disposing of oil, gas, or other minerals leased under this chapter, and for the commitment of land to a contract for development;

(2) determine the prices and set the terms and conditions under which land shall be sold, leased, or committed to a contract for development;

(3) consult with the president, chairman, or other head of the department, board, or agency, as applicable, or with the

representative of the head, on each matter before the board that affects land owned or held in trust for the use and benefit of a department, board, or agency of the state; and

(4) perform any other duties which may be required by law.

Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended Acts 1985, 69th Leg., ch. 624, Sec. 15, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 2, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 5, eff. June 19, 2009.

Sec. 32.062. ADOPTION OF RULES AND COLLECTION OF FEES. (a) The board shall adopt rules of procedure and rules for the sale, lease, and commitment to a contract for development of land as provided by this chapter.

(b) The board by rule shall adopt and shall collect reasonable fees necessary to carry out this chapter.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 16, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 3, eff. Sept. 1, 1993.

Sec. 32.063. DUTY TO ADVISE COMMISSIONER. The board shall advise the commissioner regarding any matters submitted to it for that purpose.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.064. SURVEY OR SUBDIVISION OF LAND. The board may have land surveyed or subdivided into tracts, lots, or blocks based on its determination of which method will be most conducive and convenient to facilitate the advantageous sale of land, the lease of land for oil, gas, or other minerals, or the commitment of land to a contract for development.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 17, eff. Sept. 1, 1985.

Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 4, eff. Sept. 1, 1993.

Sec. 32.065. PERMITS FOR SURVEYS OR INVESTIGATIONS. If land other than public school land is not under a valid lease or committed to a contract for development, the board may issue a permit for a geological, geophysical, or other survey or investigation of that land that will encourage the development of the land for oil, gas, or other minerals. The permit may be issued for the consideration and under the terms and conditions the board considers to be in the best interest of the state.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 18, eff. Sept. 1, 1985.
Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 5, eff. Sept. 1, 1993.

Sec. 32.066. EASEMENTS. (a) The board may grant easements of right-of-way on any land except:

(1) unsold public school land;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state; and

(3) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) This section shall not apply to land owned by the Texas Department of Transportation.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 19, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(51), eff. Sept. 1, 1995.

Sec. 32.067. MARGINAL PROPERTY ROYALTY RATES. (a) In this section:

(1) "Barrel of oil equivalent" means 6,000 cubic feet of natural gas for each 42-gallon barrel of crude oil or a volume of gas with a minimum heating value of 6,000,000 British thermal units (6,000 Mbtu), whichever is greater.

(2) "Qualifying Gulf of Mexico property" means land described in Section 52.011(2) that is subject to a lease issued

under Subchapter B, Chapter 52.

(3) "Qualifying Gulf of Mexico reservoir" means a reservoir that:

(A) during a period established by board rule has an average daily per well production equal to or less than 50 barrels of oil or barrels of oil equivalent; and

(B) underlies:

(i) a qualifying Gulf of Mexico property; or

(ii) a pooled unit that includes a qualifying Gulf of Mexico property.

(4) "Qualifying property" means land subject to a lease issued under this chapter, under Subchapter E, Chapter 51, or under Chapter 52.

(5) "Qualifying reservoir" means a reservoir that:

(A) during a period established by board rule has an average daily per well production equal to or less than 15 barrels of oil or barrels of oil equivalent; and

(B) underlies:

(i) a qualifying property; or

(ii) a pooled unit that includes a qualifying property.

(6) "Reservoir" has the same meaning as "common reservoir" as that term is defined in Section 86.002.

(b) The board by rule may provide for the reduction of royalty rates as provided by this section.

(c) The royalty rate for oil and gas produced from a qualifying reservoir may be reduced to not less than one-sixteenth (6.25 percent) for a term prescribed by the board. In determining whether to grant a reduction in the royalty rate, the board may consider whether the qualifying property is being operated efficiently, including whether the property is pooled or has reasonable potential for the application of secondary or tertiary recovery techniques.

(d) The royalty rate for the state's share under a lease issued under Subchapter F, Chapter 52, or Sections 51.195(c)(2) and (d) may be reduced under this section to not less than one-thirty-second (3.125 percent) for a term prescribed by the board. The state's royalty rate may be reduced under this subsection only if the royalty rate for the owner of the soil is reduced in the same proportion.

(e) The royalty rate under a lease issued under Subchapter C, Chapter 52, may not be reduced to a rate that is lower than the rate

under lease of land that:

(1) adjoins the land leased under Subchapter C; and

(2) is held or operated by, or under the significant control of, the state's lessee.

(f) The royalty rate under a lease issued under Subchapter F of this chapter may not be reduced to a rate that is lower than the rate under a lease of land that adjoins the land leased under Subchapter F.

(g) If a qualifying reservoir for which a royalty rate reduction is sought under this section is included in a unit subject to the board's authority, the board may modify the terms and conditions for the unit as a condition of approving the requested reduction in the royalty rate.

(h) This section does not apply to the free royalty reserved by the state under Section 51.054.

Added by Acts 1995, 74th Leg., ch. 1007, Sec. 1, eff. June 17, 1995. Amended by Acts 1999, 76th Leg., ch. 1300, Sec. 1, eff. Sept. 1, 1999.

Sec. 32.068. QUARTERLY REPORTS. Each quarter, the board shall provide to the State Board of Education a financial report on the portion of the permanent school fund assets and funds for which the board is responsible. The report must include:

(1) target and actual asset allocations, by asset type, based on fair market value or net asset value;

(2) investment performance by asset type; and

(3) benchmarks and benchmark performances.

Added by Acts 2019, 86th Leg., R.S., Ch. 493 (H.B. 4388), Sec. 2, eff. September 1, 2019.

SUBCHAPTER D. SALE AND LEASE OF LAND

Sec. 32.101. APPLICABLE LAW. Land shall be offered for sale, lease, or commitment to a contract for development subject to the terms and conditions provided by law. Sales and leases of upland within 2,500 feet of a military base may not be made unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale or lease

will not adversely affect the mission of the military base.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 149, Sec. 11, eff. May 27, 2003.

Sec. 32.104. APPRAISAL FEE. (a) The board shall charge applicants for the purchase of excess acreage and unsurveyed public school land an appraisal fee for appraising the acreage and land to determine the price at which it is to be sold by the state.

(b) The appraisal fee shall be in an amount set by the board, and any part of the fee which in the opinion of the board is unused shall be refunded to the applicant.

(c) The appraisal fee shall be paid to the commissioner who shall deposit all fees that are not refunded in the State Treasury in the fund provided under Section 32.110 of this code.

(d) The money deposited in the fund to the extent necessary is appropriated to the land office to pay salaries, travel expenses, and other expenses of personnel necessary to accomplish the appraisals or other work of the board.

(e) The provisions of this section are cumulative of other laws which are not in conflict, but if a conflict exists, this section is controlling.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.105. DATE FOR OPENING BIDS. The date for opening bids for the sale, lease, or commitment to a contract for development of land shall be:

(1) the first or third Tuesday of a month in which the board meets; or

(2) any date on which the board has a special meeting.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 7, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 7, eff.

June 19, 2009.

Sec. 32.106. DESCRIPTION OF LAND. The description of public school land offered for sale, lease, or commitment to a contract for development shall be in accord with the description which may be found in the School Land Registry or other records in the land office.

Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 8, eff. Sept. 1, 1993.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 3, eff. September 1, 2015.

Sec. 32.107. NOTICE OF SALE, LEASE, AND CONTRACT FOR DEVELOPMENT. (a) The board shall publish notice that the board will receive bids for the sale, lease, or commitment to a contract for development of land in at least three issues of at least four daily newspapers or other publications, two of which may be Internet-based journals, trade publications, newsletters, or similar news media, that are, in the opinion of the commissioner, likely to reach the public interested in responding to the notice of sale, lease, or commitment to a contract for development.

(b) The notice shall be published at least 30 days before the date the bids are due.

(c) The notice shall state that land is to be offered for sale, lease, or commitment to a contract for development on a certain date and at a certain time and the method of the sale, lease, or commitment to a contract for development and shall give notice of how a person may obtain additional information concerning the land offered for sale, lease, or commitment to a contract for development.

(d) The land office may solicit and include advertising in its publications. The commissioner shall deposit fees paid for advertising in land office publications in a separate account in the state treasury.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 20, eff. Sept.

1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 9, eff. Sept. 1, 1993. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 8, eff. June 19, 2009.

Sec. 32.1071. LEASE SALES. (a) The sale of oil, gas, or other mineral leases shall be by sealed bid or at public auction or through a combination of public auction and sealed bid, as the board elects.

(b) Sections 52.015 through 52.020 of this code apply to the sale of leases by sealed bid.

(c) The leases shall be made on terms and conditions that may be prescribed by the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 21, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 10, eff. Sept. 1, 1993.

Sec. 32.1072. MINIMUM ROYALTY, BONUS, AND RENTAL. The board may not accept a bid on an oil and gas lease that offers:

(1) a royalty of less than one-eighth of the gross production of oil and gas; or

(2) a cash bonus of less than $10 an acre.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 22, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 11, eff. Sept. 1, 1993.

Sec. 32.1073. FIXING ROYALTY, BONUS, AND RENTAL. In offering land for lease under this subchapter, the board may:

(1) set the royalty and rental and provide for bidding on a basis of the highest cash bonus offered; or

(2) set the cash bonus and rental and provide for bidding on the basis of the highest royalty offered.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 23, eff. Sept. 1, 1985.

Sec. 32.109. ACCEPTANCE AND REJECTION OF BIDS. (a) For each

tract offered for sale, lease, or commitment to a contract for development, the board must accept the best bid submitted that meets the minimum requirements set by the board or by law or reject all bids.

(b) The minutes of the board shall reflect the acceptance or rejection of a bid.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 12, eff. Sept. 1, 1993.

Sec. 32.110. SPECIAL SALE FEE. (a) On land sales and mineral leases made by the board, the purchaser or bidder is required to pay by separate check an amount equal to one and one-half percent of the bid or sale amount payable to the commissioner as a special fee. The board may waive the special fee on land sales to any state agency, board, commission, political subdivision, or other governmental entity.

(b) If the sale is by bid, only the special fees paid on the bids accepted by the board shall be deposited by the commissioner in the State Treasury as a special fund.

(c) Failure to pay the special fee shall not void a bid, but the commissioner shall demand payment of the fee before accepting the bid and completing the transaction.

(d) Checks submitted by unsuccessful bidders shall be returned to the bidders.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(n), eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 13, eff. Sept. 1, 1993.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 9, eff. June 19, 2009.

Sec. 32.111. ISSUANCE OF AWARD OR LEASE. Each award or lease shall be issued by the commissioner according to the minutes approved by the board.

Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 32.112. SALE OF TAX FORECLOSURE PROPERTY. (a) All real property or any interest in real property placed in the name of the state as a result of foreclosure of a tax lien, whether the property was sold, bid off, or otherwise transferred to the state, may be sold or leased by the board in the same manner as provided for the sale or lease of land under Chapter 51, free of any lien of a taxing unit that was a party to the judgment in the delinquent tax suit involving the property for taxes imposed on the property, penalties, or interest that are due the taxing unit.

(b) A sale of property by the board under this section vests in the purchaser of the property good and perfect title to the interest in the property owned by the person liable for the delinquent taxes. The purchaser has the right to the use and possession of the property, subject only to the person's right of redemption, a recorded restrictive covenant running with the land, and a valid easement of record as of the date the property was placed in the name of the state, if the covenant or easement was recorded before January 1 of the year in which the tax lien attached to the property.

(c) The board may retain from the proceeds of a sale or lease conducted under this section the cost of conducting the transaction, including advertising, appraisal, and administrative costs. The balance of the proceeds shall be deposited in the State Treasury to the credit of the Texas capital trust fund. The board is not required to pay any portion of the proceeds to a taxing unit that was a party to the judgment in the delinquent tax suit involving the property in satisfaction of any taxes imposed on the property, penalties, or interest that are due the taxing unit.

Added by Acts 1987, 70th Leg., ch. 208, Sec. 10, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 861, Sec. 1, eff. June 18, 1997.

Sec. 32.113. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the board, the following statutes do not apply to the

board:

(1) a statute that would require the board to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 2, eff. May 25, 2007.

SUBCHAPTER E. CONDITIONS OF LEASES

Sec. 32.151. TERM OF LEASE. Each oil and gas lease shall be for a primary term not to exceed 10 years and for as long thereafter as oil or gas is produced in paying quantities.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 14, eff. Sept. 1, 1993.

Sec. 32.152. ASSIGNMENT AND TRANSFER. A lessee may transfer or assign his lease at any time in the manner provided by Section 52.026 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.153. LEASE RELINQUISHMENT. A lessee may relinquish his lease to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.154. LEASES SUBJECT TO LAWS, ORDERS, AND RULES. Drilling or mining operations for oil, gas, or other minerals and the production of oil, gas, or other minerals under a lease issued under

this chapter are subject to:

(1) the laws of this state;

(2) valid orders made by the Railroad Commission of Texas or any other regulatory authority controlling the development of leases for the production of oil, gas, or other minerals; and

(3) rules the board adopts.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.155. RENTAL AND ROYALTY PAYMENTS. (a) Each lessee or his assigns shall pay annual rentals and royalties as specified by the board.

(b) Subchapter D, Chapter 52 of this code applies to a lease issued under this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.156. FORFEITURE. Each lease is subject to forfeiture by the commissioner under the conditions and in the manner provided by Section 52.176 of this code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 24, eff. Sept. 1, 1985.

Sec. 32.157. SPECIAL ACCOUNTS. (a) Special funds are created in the State Treasury to be known as the Parks and Wildlife Department and the Texas Department of Corrections special mineral funds.

(b) All money collected as bonus, royalty, rental, payments for easements, and permit fees attributable to land covered by this chapter, other than land dedicated to the permanent school fund, shall be deposited in the special mineral fund of the department, board, or agency owning the land.

(c) To offset the costs of leasing and administering mineral leasing, all fees collected relating to leasing lands owned by boards, departments, or agencies, including the sales fee and any penalties collected shall be credited to the same fund account in the treasury as those similar fees collected in the leasing of land dedicated to the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 50, eff. Sept. 1, 1985.

SUBCHAPTER F. LEASE OF HIGHWAY LANDS

Sec. 32.201. PREFERENTIAL RIGHT TO LEASE CERTAIN LAND BY ADJOINING MINERAL OWNER; ALLOCATION AND USE OF PAYMENTS RECEIVED FROM LEASING OF LAND OWNED FOR COUNTY ROAD. (a) In this section, "mineral owner" means any person who owns the right to explore for, develop, and produce oil and gas from a tract of land adjoining lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way.

(b) Oil and gas under lands owned by the state that were or may be acquired to construct or maintain a highway, road, street, alley, or other right-of-way may be offered for lease under this chapter only after the oil and gas are first offered for lease to the mineral owner of the land adjoining the length of the land to be leased. The board shall set the terms and conditions of the lease as follows:

(1) In instances where the adjoining land is covered by an existing oil and gas lease currently in effect, the royalty, bonus, and rental shall be identical to those amounts contained in the lease covering the adjoining land or, in the event there is more than one lease covering adjoining land, shall be no less favorable to the state than the most favorable of such leases.

(2) In instances where the adjoining land is not covered by an existing oil and gas lease, the royalty, bonus, and rental for the lease shall be as provided in Sections 32.1072 and 32.1073 of this code.

(c) The preferential right of the mineral owner created by Subsection (b) of this section is subject to the following limitations:

(1) the lease of the oil and gas extends only to the center of the width of the particular highway, road, street, alley, or other right-of-way adjacent to the property in which the lessee is the mineral owner; and

(2) the preferential right to lease must be exercised by the mineral owner within 120 days of actual notice of the intention to lease as provided by Subsection (d) of this section.

(d) Actual notice, describing the land as required by Section 32.204 of this code, has occurred upon mailing of the notice of the intention to lease by registered mail to the last known address of

the affected mineral owner or owners, if more than one, as determined from records of the county clerk for the county in which the land to be leased is located. If the identity or address of a mineral owner is not known, and cannot be located after a diligent search of the records of the county clerk and tax assessor-collector for the county in which the land is located, the actual notice required by Subsection (c) of this section shall be provided by publication. The notice shall be published in the manner provided in the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of interest in the land. Actual notice has occurred on completion of all procedures required by the Rules of Civil Procedure.

(e) To exercise the preferential right under this section, the mineral owner must tender to the commissioner the bonus set by the board, together with the appropriate statutory sales fee. The tender to the commissioner must be made on or before the end of the 120-day period provided by Subsection (c)(2) of this section.

(f) At any time during the 120-day period a mineral owner may waive his preferential right to lease by providing the General Land Office with a written waiver. Failure by the mineral owner to exercise his preferential right to lease the land within the 120-day period provided by Subsection (c)(2) of this section, or the filing of a written waiver, results in forfeiture of the preferential right to lease the land.

(g) If a mineral owner's preferential right is forfeited under this section, the land may be offered for lease by the board directly to an applicant or by sealed bid as provided by this chapter. The board shall not offer nor accept a price or terms which are less than that offered to the adjoining mineral owner under this section. If not leased at a public offering within 18 months from the date the lease was offered to the adjoining mineral owner, it shall be reoffered to the mineral owner prior to public offering in accordance with the provisions of this section.

(h) An adjoining mineral owner shall have the right to seek a judicial determination of the state's title to minerals beneath the adjoining highway right-of-way, and legislative consent to sue the state is hereby granted. Within 60 days of a final nonappealable judgment finding the state did not have title, or only had partial title, the state shall refund all or the proportionate part of any bonus, rental, royalty, and other consideration to the lessee. The

state's lessee shall pay to the lawful mineral owner the value of any oil and gas produced from or allocated to the minerals upon which the state's title failed.

(i) Subject to Subsection (j), any payment received from the leasing of oil and gas under lands owned by the state that were or may be acquired by a county to construct a county road shall be deposited to the credit of the county road oil and gas fund as provided by Section 32.2015.

(j) Notwithstanding any other provision of law, a lease of oil and gas under land described by Subsection (i) that is entered into on or after September 1, 2017, must require any payment under the lease to be made directly to the county treasurer, or officer performing the function of that office, in the county in which the land is located, as determined by the commissioner and described in the lease, for deposit to the credit of the county road and bridge fund of the county to be used for the purposes described by Section 32.2015(d). A lessee's obligation to make a payment under this subsection is satisfied by making that payment to the county described in the lease. This subsection does not create a cause of action for a county to pursue remedies under a lease described by this subsection, and a county is not considered to be a party to such a lease for the purpose of asserting a right granted by the lease or under this subsection.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 2, eff. June 8, 1985. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 16, eff. Sept. 1, 1987. Renumbered from Sec. 34.0511 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(c), (f)(1), (2), (g), eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 1, eff. September 1, 2017.

Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 2, eff. September 1, 2017.

Sec. 32.2015. FUND. (a) The county road oil and gas fund is a trust fund outside the state treasury to be held and administered by the comptroller as trustee for the payment, without appropriation, to counties of money received from the leasing of oil and gas under

lands owned by the state that were or may be acquired by a county to construct a county road.

(b) The land office shall deposit to the credit of the fund money received under Section 32.201(i) from the leasing of oil and gas under lands owned by the state that were or may be acquired by a county to construct a county road.

(c) Interest or other income from investment of the fund shall be deposited to the credit of the fund.

(d) Money in the fund received from the leasing of oil and gas under lands described by Subsection (b) located in a county, together with the interest or other income from investment of that money deposited to the credit of the fund, shall be disbursed at least twice each fiscal year, without appropriation, to the county treasurer or officer performing the function of that office. The county treasurer or officer shall deposit amounts received under this subsection to the credit of the county road and bridge fund of the county. Money deposited to the credit of that fund under this subsection may be used by the county only for road maintenance purposes.

Added by Acts 2015, 84th Leg., R.S., Ch. 1079 (H.B. 2521), Sec. 3, eff. September 1, 2017.

Sec. 32.202. POOLING. Any oil and gas lease offered under Sec. 32.201 of this code shall provide:

(1) authority for pooling all of the leased area into units of no more than 160 acres for an oil well or 640 acres for a gas well plus a 10 percent tolerance or of a unit size allowed under or prescribed by rules of the Railroad Commission of Texas;

(2) that the production allocable to the state lease shall be based upon the surface acreage of the state lease included in the unit;

(3) that the unit operations, production from any portion of the unit or payment of shut-in gas well royalty on a lease or unit well shall be considered for all purposes to be the conduct of operations and production on the state lease; and

(4) that neither unit production of oil or gas, nor unit operations, nor payment of shut-in royalties from a unit gas well, shall serve to hold the lease in force as to any area outside the

unit, regardless of whether the production, maintenance of a shut-in gas well, or operations are actually located on the state tract or not.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0512 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 642, Sec. 3, eff. Aug. 26, 1991.

Sec. 32.203. COMPENSATORY ROYALTY. Compensatory royalty shall be paid to the state on any lease offered and granted under Section 32.201 of this code if the lease is not being held by production on the tract, by production from a pooled unit, or by payment of shut-in royalties in accordance with the terms of the lease, and if oil or gas is sold and delivered in paying quantities from a well located within 2,500 feet of the leased premises and completed in a producible reservoir underlying the state lease or in any case in which drainage is occurring. Such compensatory royalty shall be paid at the royalty rate provided in the state lease based on the value of production from the well as provided in the lease on which such well is located. The compensatory royalty shall be paid in the same proportion that the acreage of the state lease has to the acreage of the state lease plus the acreage of a standard proration unit under statewide field rules or, if applicable, the special field rules adopted by the Railroad Commission of Texas for the field in which the well has been completed. The compensatory royalty is to be paid monthly to the commissioner on or before the last day of the month next succeeding the month in which the oil or gas is sold and delivered from the well. Notwithstanding anything herein to the contrary, compensatory royalty payable under this section shall be no less than an amount equal to double the annual rental payable under the state lease. Payment of compensatory royalty shall maintain the state lease in force and effect for so long as such payments are made as provided in this section.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0513 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), eff. Sept. 1, 1987.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 10, eff. June 19, 2009.

Sec. 32.204. LEASE PROVISIONS. Any lease offered under Section 32.201 of this code shall contain a sufficient description of the land to be leased to enable the tract to be located on the ground. All other terms and conditions of the lease shall be identical to those contained in the lease covering such adjacent land, provided the terms and conditions are not inconsistent with any laws of this state. In the event there is more than one lease covering such land, the terms and conditions of the lease shall be no less favorable to the state than the most favorable of such leases. In those instances where the adjoining land is not covered by an existing oil and gas lease, all other terms and conditions of the lease shall be set by the board.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0514 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(b), (f)(3), eff. Sept. 1, 1987.

Sec. 32.205. RULES. The board may adopt rules to carry out the provisions of this chapter.

Added by Acts 1985, 69th Leg., ch. 327, Sec. 3, eff. June 8, 1985. Renumbered from Sec. 34.0515 by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(a), eff. Sept. 1, 1987. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 6.05(f)(4), eff. Sept. 1, 1987.

Sec. 32.206. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve by rule or order a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land owned by the state that was acquired to construct or maintain a highway, road, street, or alley.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) This section does not apply to an interest subject to

pooling or unitization by a lessee under a lease issued under this subchapter.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 15, eff. Sept. 1, 1993.

Sec. 32.207. ADVERTISING FOR BIDS; POOLING. Section 52.076 applies to oil and gas under land owned by this state that was acquired to construct or maintain a highway, road, street, or alley in the same manner as that section applies to oil and gas under a riverbed or channel.

Added by Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 11, eff. June 19, 2009.

SUBCHAPTER G. TRADE OF LAND

Sec. 32.251. AUTHORITY OF BOARD, IN CONJUNCTION WITH LAND OFFICE, TO TRADE LAND. The Board, in conjunction with the land office, may trade fee and lesser interests in land dedicated to the permanent school fund for fee and lesser interests in land not dedicated to that fund if the board and the commissioner determine that the trade is in the best public interest of the people of this state.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.252. AUTHORITY OF STATE AGENCY OR POLITICAL SUBDIVISION TO SELL OR EXCHANGE REAL PROPERTY. (a) A State Agency Or Political subdivision may directly sell or exchange real property belonging to the state agency or political subdivision with the board for land dedicated to the permanent school fund if the exchange is for fair market value.

(b) Section 272.001, Local Government Code, does not apply to an exchange under this section.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.253. PURPOSE OF TRADE. Land dedicated to or acquired for the use and benefit of the permanent school fund may be traded to:

(1) aggregate sufficient acreage of contiguous land to create a manageable unit;

(2) acquire land having unique biological, geological, cultural, or recreational value;

(3) create a buffer zone for the enhancement of already existing public land, facilities, or amenities; or

(4) acquire land for the use and benefit of the permanent school fund as determined by the board to be in the best interest of the fund.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 12, eff. June 19, 2009.

Sec. 32.255. DEED REQUIRED. (a) A trade of land dedicated to the permanent school fund may be made only by a deed signed jointly by the commissioner and the governor.

(b) The governor's failure to sign the deed is a veto of the proposed trade.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.256. DEDICATION OF ACQUIRED LAND TO FUND. Land acquired by the board by trade under this subchapter is dedicated to the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.257. SUBSURFACE MINERAL RIGHTS. (a) If this state retains the subsurface mineral rights to the oil, gas, and other minerals in permanent school fund land traded under this subchapter,

an unrestricted right of ingress to and egress from the land by this state and its lessees shall be retained for the purpose of exploration, development, and production of the oil, gas, and other minerals to which the rights are retained by this state.

(b) This state is entitled to lease the subsurface mineral rights retained under this section in the same manner and under the same conditions as subsurface mineral rights are leased in permanent school fund land in which this state owns the surface title and the subsurface mineral rights.

(c) A lessee of the subsurface mineral rights retained under this section is liable to the owner of the land for actual damages to the land that may occur as a result of exploration for and development and production of the oil, gas, and other minerals to which rights are retained under this section.

(d) Notwithstanding anything to the contrary in this subchapter, the board, to complete a trade of equal value, may convey the surface estate and reserve the oil, gas, and other minerals, with the surface owner acting as agent for the state under:

(1) Subchapter F, Chapter 52, in leasing the land for oil and gas and receiving one-half the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages; or

(2) Subchapter C, Chapter 53, in leasing the land for sulphur, coal, lignite, uranium, or potash and receiving 40 percent of the bonus, rental, and royalty for acting as agent for the state in leasing the land and as compensation for surface damages.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

Sec. 32.258. REPORT TO LEGISLATURE. (a) The board shall report to the legislature a trade of land dedicated to the permanent school fund. The board shall report the trade at:

(1) the first regular session of the legislature occurring after the trade if the legislature is not meeting in regular session at the time the trade is made; or

(2) the regular session of the legislature occurring at the time of the trade if the legislature is meeting in regular session at the time the trade is made.

(b) The report must state the facts that warranted the trade.

Added by Acts 2003, 78th Leg., ch. 1276, Sec. 13.001(a), eff. Sept. 1, 2003.

CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 33.001. POLICY. (a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intracoastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

Acts 1977, 65th Leg., p. 2382, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.002. PURPOSE. The purpose of this chapter is to implement the policies stated in Section 33.001 by delegating to the board, assisted by the appropriate staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.003. SHORT TITLE. This chapter may be cited as the Coastal Public Lands Management Act of 1973.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.004. DEFINITIONS. In this chapter:

(1) "Land office" means the General Land Office.

(2) "Commissioner" means the Commissioner of the General Land Office.

(2-a) "Committee" means the Coastal Coordination Advisory Committee.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal management program provided by this chapter.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land.

(13) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(1), eff. September 1, 2011.

(14) "Coastal zone" means the portion of the coastal area located within the boundaries established by the coastal management program under Section 33.053(a)(1).

(15) "Network" means the Texas Coastal Ocean Observation Network.

Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 1, eff. June 8, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 1, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(1), eff. September 1, 2011.

Sec. 33.005. EFFECT OF CHAPTER. (a) This subchapter does not repeal Subchapter B, Chapter 436, Health and Safety Code, or the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112 through 66.118, 66.205, 76.031 through 76.036, 78.001 through 78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(100), eff. Sept. 1, 1991.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 33.011. BOARD TO ADMINISTER, IMPLEMENT, AND ENFORCE CHAPTER. The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.012. LAND OFFICE TO ASSIST BOARD. The appropriate staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.013. ADDITIONAL PERSONNEL. The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter.

Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.015. SPECIAL ACCOUNT. (a) A dedicated account is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this dedicated account.

(b) Sections 403.094(h) and 403.095(b), Government Code, do not apply to the dedicated account created under this section.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 9, eff. Sept. 1, 1993.

Sec. 33.016. DISPOSITION OF OTHER FUNDS. Money received by the board for the grant of any interest not under Section 33.015 of this code shall be deposited in the State Treasury to the credit of the permanent school fund.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 33.051. GENERAL DUTY. The board, the commissioner, the land office, and the network shall perform the duties provided in this subchapter.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 33, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995. Amended by:

Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 2, eff. June 17, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 3, eff. September 1, 2011.

Sec. 33.052. DEVELOPMENT OF COASTAL MANAGEMENT PROGRAM. (a) The commissioner shall develop a continuing comprehensive coastal management program pursuant to the policies stated in Section 33.202.

(b) In developing the program, the land office shall act as the lead agency to coordinate and implement a comprehensive coastal management program for the management of uses affecting coastal natural resource areas, in cooperation with other state agencies that have duties relating to coastal matters. The program shall implement the policies stated in Section 33.202 and shall include the elements listed in Section 33.053.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(2), eff. September 1, 2011.

(d) For purposes of Subsections (a) and (b) of this section, "coastal natural resource areas" has the meaning assigned by Section 33.203 of this code.

(e) This section does not add to or subtract from the duties and responsibilities of a state agency other than the land office, the commissioner, and the board.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1145, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 295, Sec. 34, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.263, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 165, Sec. 22(52), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 4, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(2), eff. September 1, 2011.

Sec. 33.053. ELEMENTS OF COASTAL MANAGEMENT PROGRAM. (a) The coastal management program, in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), shall

include the following elements:

(1) an identification of the boundaries of the coastal zone subject to the coastal management program as provided by Section 33.2053(k);

(2) a continuous analysis of the potential uses for the land and water within the coastal zone, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses within the coastal zone, including specifically those uses of lowest priority;

(4) a list of the uses of the land and water within the coastal zone that are permissible under state law and under agency or subdivision actions described by Sections 33.2051 and 33.2053 and that would have a direct and significant impact on the coastal waters;

(5) recommendations as to increments of jurisdiction or authority necessary to protect land and water within the coastal zone from direct and significant detrimental consequences flowing from the uses of adjacent land;

(6) an inventory of designated coastal natural resource areas, as defined by Section 33.203, in the coastal zone;

(7) a description of the organizational structure by which the coastal management program is implemented and administered;

(8) a compilation of state constitutional provisions, laws, rules, and judicial decisions under which the state proposes to exercise control over the uses of land and water described by Subdivision (4);

(9) a list of each agency or subdivision action, as described by Sections 33.2051 and 33.2053, that may have a direct and significant detrimental impact on coastal natural resource areas;

(10) a list of each federal agency action or activity and each outer continental shelf plan that may have a direct and significant detrimental impact on coastal natural resource areas;

(11) a procedure, as described under Sections 33.205, 33.2051, 33.2052, 33.2053, 33.206, 33.208, and 33.209, for determining the consistency of an agency or subdivision action or a federal agency action or activity or outer continental shelf plan with the goals and policies of the coastal management program;

(12) a definition of "gulf beach," as defined by Section

33.203, and a description of the statutory planning process or program for protection of and access to public beaches and other public coastal areas of environmental, recreational, historical, aesthetic, ecological, or cultural value;

(13) a description of the statutory planning process or program for energy facilities likely to be located in, or that may directly and significantly affect, the coastal zone;

(14) a description of the statutory planning process or program for:

(A) assessing the effects of shoreline erosion;

(B) studying and evaluating ways to control or reduce the impact of shoreline erosion; and

(C) restoring areas detrimentally affected by shoreline erosion;

(15) a description of the state's statutory program regulating nonpoint source water pollution, as it relates to the coastal zone; and

(16) an explanation of the relationship of specific policies of the coastal management program to:

(A) protection of resources;

(B) management of coastal development; and

(C) simplification of governmental procedures.

(b) For purposes of Subsections (a)(9) and (a)(11), "agency or subdivision action" has the meaning assigned by Section 33.203.

(c) For purposes of Subsections (a)(10) and (a)(11), "federal agency action," "federal agency activity," and "outer continental shelf plan" have the meanings assigned by Section 33.203.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995.

Sec. 33.054. REVIEW AND AMENDMENT OF MANAGEMENT PROGRAM. The commissioner may review the management program periodically and may amend the management program as new information or changed conditions may warrant.

Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 35, eff. June 7, 1991.

Sec. 33.055. PUBLIC HEARINGS TO CONSIDER COASTAL MANAGEMENT PROGRAM. In developing, reviewing, or amending the coastal management program, after due notice to affected persons and the public generally, the commissioner shall hold or have held public hearings as the commissioner determines to be appropriate.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 36, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 2, eff. June 8, 1995. Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 7, eff. September 1, 2011.

Sec. 33.056. STRUCTURES ON LAND ADJACENT TO COASTAL PUBLIC LAND. (a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from adjacent land not owned by the state.

(b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.057. GIFTS OF INTERESTS IN LAND. (a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.

(b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.058. PURCHASE OF FEE AND LESSER INTERESTS IN LAND. (a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.

(b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.

(c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.

(d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.059. STUDIES. The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.060. LOCATING AND MARKING BOUNDARIES. The board may locate and have marked on the ground the boundaries separating coastal public land from other land.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.061. COMPLAINTS. (a) The board shall receive and

evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.

(b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief.

Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.062. DESIGNATED OFFICIAL REPRESENTATIVE. The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal government of any authority it may have over navigable water under the Constitution of the United States.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.063. FEES. The board may prescribe reasonable filing fees and fees for granting leases, easements, permits, and other interests in or rights to use coastal public land.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.064. RULES. The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.065. TEXAS COASTAL OCEAN OBSERVATION NETWORK. (a) The Texas Coastal Ocean Observation Network is a cooperative project of Texas A&M University--Corpus Christi, Lamar University, the Texas Water Development Board, and the land office.

(b) The network shall collect data on natural processes affecting the coast for the purpose of studying, planning for, and managing human uses of the coast as they are affected by those natural processes.

(c) The participating state entities shall coordinate the project with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities.

(d) The participating state entities may contract and enter into agreements with the United States Army Corps of Engineers, the National Oceanic and Atmospheric Administration, and other appropriate entities, including private entities, as necessary to carry out their duties under this section.

Added by Acts 2005, 79th Leg., Ch. 719 (S.B. 471), Sec. 3, eff. June 17, 2005.

SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

Sec. 33.101. APPLICATION TO ACQUIRE RIGHTS IN COASTAL PUBLIC LAND. Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.102. CONTENTS OF APPLICATION. The application to acquire rights in coastal public land shall include any information the board considers necessary to process the application, including information necessary to evaluate the purpose for which the land is to be used.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 1, eff. September 1, 2007.

Sec. 33.103. INTERESTS WHICH MAY BE GRANTED BY THE BOARD. (a) The board may grant the following interests in coastal public land for the indicated purposes:

(1) leases for public purposes;

(2) easements for purposes connected with:

(A) ownership of littoral property; or

(B) the operation of a facility operated by an existing channel and dock corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes;

(3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property;

(4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests; and

(5) subject to Section 33.001(g), any other interest in coastal public land for any purpose if the board determines that the grant is in the best interest of the state.

(b) The board may not grant any interest in land within 2,500 feet of a military base unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the grant will not adversely affect the mission of the military base.

Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 1, eff. Aug. 26, 1985; Acts 2003, 78th Leg., ch. 149, Sec. 12, eff. May 27, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 2, eff. September 1, 2007.

Sec. 33.104. DETERMINATION OF TERMS OF GRANT; CONSUMMATION OF TRANSACTION. If the board approves the application, the board shall determine the terms, conditions, and consideration for the grant of an interest in or right to use coastal public land and may consummate

the transaction.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 3, eff. September 1, 2007.

Sec. 33.105. PERSONS TO WHOM INTEREST IN LAND MAY BE GRANTED. The board may grant to any person an interest in coastal public land if the board determines that the grant is in the best interest of the state.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 3, eff. September 1, 2007.

Sec. 33.106. POLICIES, PROVISIONS, AND CONDITIONS OF LEASES. In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107 through 33.110 of this code.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.107. PROTECTION OF RIGHTS. The littoral rights of the adjacent upland owner shall be protected in a lease.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.108. RIGHTS OF THE PUBLIC. Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.109. COUNTIES AND CITIES ELIGIBLE TO LEASE COASTAL PUBLIC LAND. (a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.110. CONTRACTS AND FRANCHISES. (a) With the approval of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1256, Sec. 24, eff. September 1, 2007.

Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 24, eff. September 1, 2007.

Sec. 33.111. GRANTING EASEMENTS. (a) The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property.

(b) The board may grant easement rights to construct channels, wharves, docks, and marinas to an existing corporation that was issued articles of incorporation under Chapters 13 and 14, Title 32, Revised Statutes.

(c) Notwithstanding any provision in its charter or articles of

incorporation to the contrary, a corporation described in Subsection (b) of this section may only obtain the use of or acquire property from the state as provided by that subsection.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 2, eff. Aug. 26, 1985.

Sec. 33.112. FAILURE TO OBTAIN AN EASEMENT. (a) Any owner of littoral property or any person acting under the owner of littoral property who for purposes connected with the ownership of the littoral property shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than $200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.113. INTERPRETATION OF EASEMENT GRANT. The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.114. POLICIES, PROVISIONS, AND CONDITIONS OF EASEMENTS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.115. PIERS. (a) Without obtaining an easement from the board, the owner of littoral property may construct a pier on adjacent coastal public land if the pier:

(1) is not used for commercial purposes;

(2) is 115 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) In addition to the provisions of Subsection (a), the board may adopt rules with limitations and requirements that are consistent with the policies stated in Section 33.001 of this code that allow an owner of littoral property to construct a pier with associated appurtenances on adjacent coastal public land without first obtaining an easement from the board.

(c) The location and dimensions of the pier and description of any associated appurtenances must be registered with the board in the manner provided in this chapter.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 366, Sec. 1, eff. May 26, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 58 (H.B. 932), Sec. 1, eff. May 17, 2005.

Sec. 33.116. FAILURE TO REGISTER PIER. Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than $200.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.117. PUBLIC POLICY OF STATE TO BE CONSIDERED. In administering Sections 33.111 through 33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 33.118. SINGLE PERMIT. If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document incorporating all rights and privileges of the applicant.

Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.119. ISSUANCE OF PERMITS. The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the ownership of littoral property.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.120. FAILURE TO OBTAIN A PERMIT. A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than $50 nor more than $1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.121. UNAUTHORIZED STRUCTURES. Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than $50 nor more than $1,000.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.122. EXCEPTION TO PERMIT REQUIREMENT. No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.123. POLICIES, PROVISIONS, AND CONDITIONS OF PERMITS. In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120 through 33.122 and 33.124 through 33.126 of this code.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.124. PERMITS PROHIBITED FOR CERTAIN STRUCTURES. The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of privately owned littoral residential property, without written consent of the littoral owner.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 42 (H.B. 708), Sec. 1, eff. May 13, 2005.

Sec. 33.125. AUTOMATIC REVOCATION AND TERMINATION OF A PERMIT. A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

(1) subsequently leased for public purposes;

(2) exchanged for littoral property under this chapter; or

(3) conveyed to a navigation district as provided by law.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.126. TERMINATION OF PERMIT BY BOARD. Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board.

Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.127. TERMS AND RENEWAL OF PERMITS. Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.128. USE OF PREVIOUSLY UNAUTHORIZED STRUCTURES. Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.129. PROHIBITIONS ON THE GRANT OF PERMITS. The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.130. REPAIRS AND REBUILDING. If a structure for which a permit is issued is severely damaged or destroyed by any means, no

major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.131. STRUCTURES AS PROPERTY OF THE STATE. A structure presently existing or to be constructed in the future for which a permit is required under Section 33.119 of this code is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 10, eff. Sept. 1, 1993.

Sec. 33.132. REGISTRATION BY BOARD. (a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.133. REMEDIES CUMULATIVE. Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.134. USE AND DEVELOPMENT OF LAND BY LITTORAL OWNER. None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.135. NOTICE TO PURCHASER OR GRANTEE OF COASTAL AREA PROPERTY. (a) A person who sells, transfers, or conveys an interest other than a mineral, leasehold, or security interest in real property adjoining and abutting the tidally influenced waters of the state must include the following notice as a part of a written executory contract for the sale, transfer, or conveyance:

"(1) The real property described in and subject to this contract adjoins and shares a common boundary with the tidally influenced submerged lands of the state. The boundary is subject to change and can be determined accurately only by a survey on the ground made by a licensed state land surveyor in accordance with the original grant from the sovereign. The owner of the property described in this contract may gain or lose portions of the tract because of changes in the boundary.

"NOTICE REGARDING COASTAL AREA PROPERTY

"(2) The seller, transferor, or grantor has no knowledge of any prior fill as it relates to the property described in and subject to this contract.

"(3) State law prohibits the use, encumbrance, construction, or placing of any structure in, on, or over state-owned submerged lands below the applicable tide line, without proper permission.

"(4) The purchaser or grantee is hereby advised to seek the advice of an attorney or other qualified person as to the legal nature and effect of the facts set forth in this notice on the property described in and subject to this contract. Information regarding the location of the applicable tide line as to the property described in and subject to this contract may be obtained from the

surveying division of the General Land Office in Austin."

(b) If property described under Subsection (a) of this section is sold, transferred, or conveyed without an executory contract for conveyance, a written statement containing the notice prescribed by that subsection must be delivered to the grantee for execution and acknowledgement of receipt before the conveyance is recorded.

(c) Failure to include the statement in an executory contract for conveyance shall be grounds for the purchaser to terminate such contract, and upon termination any earnest money shall be returned to the party making the deposit.

(d) Failure to provide this statement prior to closing, either in the executory contract for conveyance or in a separate written statement, shall constitute a deceptive act under Section 17.46, Business & Commerce Code.

(e) This section or the action of any party subject to this section does not diminish or modify the beach access and use rights of the public as acquired by statute or under common law.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 11, eff. Sept. 1, 1993.

Sec. 33.136. PROPERTY RIGHTS: PRESERVATION OF LITTORAL RIGHTS. (a) Notwithstanding any law to the contrary, a person may not undertake an action on or immediately landward of a public beach or submerged land, including state mineral lands, relating to erosion response that will cause or contribute to shoreline alteration before the person has conducted and filed a coastal boundary survey in the same manner as the survey of public land required by Chapter 21 and any applicable rule of the commissioner and has obtained any required lease or other instrument from the commissioner or board, as applicable. A person is not required to obtain a lease or other instrument from the commissioner or board if the action is confined to land owned by a navigation district or municipality. On filing of the survey, the shoreline depicted on the survey is a fixed line for the purpose of locating a shoreline boundary, subject to movement landward of that line. A coastal boundary survey conducted under this section may not be filed until the commissioner gives notice of approval under Subsection (c).

(b) The survey must contain the following statement: "NOTICE: This survey was performed in accordance with Section 33.136, Natural

Resources Code, for the purpose of evidencing the location of the shoreline in the area depicted in this survey as that shoreline existed before commencement of erosion response activity, as required by Chapter 33, Natural Resources Code. The line depicted on this survey fixes the shoreline for the purpose of locating a shoreline boundary, subject to movement landward as provided by Section 33.136, Natural Resources Code."

(c) Within 30 days after the date the commissioner approves a coastal boundary survey under this section, the commissioner shall provide notice of that approval by:

(1) publication in the Texas Register;

(2) publication for two consecutive weeks on the Internet website of the land office; and

(3) filing a copy of the approval in the archives and records division of the land office.

(d) A person who claims title to permanent school fund land as a result of accretion, reliction, or avulsion in the coastal zone on or after September 1, 1999, must, in order to prevail in the claim, prove that:

(1) a change in the shoreline has occurred;

(2) the change did not occur as a result of the claimant's actions, the action of any predecessor in title, the action of any grantee, assignee, licensee, or person authorized by the claimant to use the claimant's land, or an erosion response activity; and

(3) the claimant is entitled to benefit from the change.

(e) An upland owner who, because of erosion response activity undertaken by the commissioner, ceases to hold title to land that extends to the shoreline as altered by the erosion response activity is entitled to continue to exercise all littoral rights possessed by that owner before the date the erosion response activity commenced, including rights of ingress, egress, boating, bathing, and fishing.

(f) In this section, "erosion response" means an action intended to address coastal erosion, mitigate the effect of coastal erosion, or maintain or enhance beach stability or width. The term includes:

(1) beach nourishment;

(2) sediment management;

(3) beneficial use of dredged material;

(4) construction of breakwaters;

(5) dune creation or enhancement; and

(6) revegetation.

Added by Acts 1997, 75th Leg., ch. 938, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 508, Sec. 3, eff. Sept. 1, 1999. Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 4, eff. September 1, 2015.

SUBCHAPTER E. ENFORCEMENT AND APPEAL

Sec. 33.171. ENFORCEMENT OF RIGHTS OF LITTORAL OWNERS. (a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner.

(c) The state is entitled to receive notice of a claim against the School Land Board under this subchapter not later than the 180th day after the day the action of the board giving rise to the claim occurred. The notice must reasonably describe:

(1) the action of the board that affected the littoral owner's rights;

(2) the time and place of the board's action; and

(3) the nature of the claim, specifying, as applicable, the manner in which:

(A) the board's action affected the title to or boundary of coastal public land to the detriment of the littoral owner;

(B) the board's action affected an interest in land sought or granted under this chapter; or

(C) the board violated this chapter or a rule adopted by the board under this chapter.

(d) The notice requirement of Subsection (c) is a jurisdictional prerequisite to the institution of suit under this section regardless of actual notice, express or implied, to the board or the state.

Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 147, Sec. 1, eff. Sept. 1, 2003.

Sec. 33.172. VENUE. Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

(1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;

(2) touching any interest in land sought or granted under this chapter; and

(3) to determine the boundaries or title to any coastal public land.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.173. RIGHT TO APPEAL. Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.174. TIME FOR FILING PETITION. The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.175. SERVICE OF CITATION. Service of citation on the board may be accomplished by serving the commissioner.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 33.176. ISSUE ON APPEAL. In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or

unreasonable.

Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. COASTAL COORDINATION

Sec. 33.201. SHORT TITLE. This subchapter may be cited as the Coastal Coordination Act.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.

Sec. 33.202. POLICY. (a) It is declared to be the policy of this state to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, and to better serve the people of Texas by:

(1) continually reviewing the principal coastal problems of state concern, coordinating the performance of government programs affecting coastal natural resource areas, and coordinating the measures required to resolve identified coastal problems; and

(2) making all coastal management processes more visible, accessible, coherent, consistent, and accountable to the people of Texas.

(b) It is declared to be the policy of this state that the chief executive officer of the state should represent the State of Texas in discussions and negotiations with the federal government with regard to the effect of federal actions on the coastal programs and policies of the State of Texas.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 3, eff. June 8, 1995.

Sec. 33.203. DEFINITIONS. In this subchapter:

(1) "Coastal natural resource areas" means:

(A) coastal barriers;

(B) coastal historic areas;
(C) coastal preserves;
(D) coastal shore areas;
(E) coastal wetlands;
(F) critical dune areas;
(G) critical erosion areas;
(H) gulf beaches;
(I) hard substrate reefs;
(J) oyster reefs;
(K) submerged land;
(L) special hazard areas;
(M) submerged aquatic vegetation;
(N) tidal sand or mud flats;
(O) water of the open Gulf of Mexico; and
(P) water under tidal influence.

(2) "Coastal barrier" means an undeveloped area on a barrier island, peninsula, or other protected area, as designated by United States Fish and Wildlife Service maps.

(3) "Coastal historic area" means a site that is specially identified in rules adopted by the Texas Historical Commission or the Antiquities Committee as being coastal in character and that is:

(A) a site on the National Register of Historic Places, designated under 16 U.S.C. Section 470a and 36 CFR Part 63, Chapter 1; or

(B) a state archaeological landmark, as defined by Subchapter D, Chapter 191.

(4) "Coastal preserve" means any land, including a park or wildlife management area, that is owned by the state and that is:

(A) subject to Chapter 26, Parks and Wildlife Code, because it is a park, recreation area, scientific area, wildlife refuge, or historic site; and

(B) designated by the Parks and Wildlife Commission as being coastal in character.

(5) "Coastal shore area" means an area within 100 feet landward of the highwater mark on submerged land.

(6) "Coastal waters" means waters under tidal influence and waters of the open Gulf of Mexico.

(7) "Coastal wetlands" means wetlands, as the term is defined by Section 11.502, Water Code, located:

(A) seaward of the coastal facility designation line

established by rules adopted under Chapter 40;

(B) within rivers and streams, to the extent of tidal influence, as shown on the Texas Natural Resource Conservation Commission's stream segment maps, excluding the portion of the Trinity River located in Liberty County;

(C) within one mile of the mean high tide of the portion of river and stream described by Paragraph (B), except as provided by Paragraphs (D) and (E);

(D) in the case of wetlands bordering the portion of the Trinity River to which Paragraph (B) applies:

(i) within the area located between the mean high tide line on the western shoreline of that portion of the river and Farm-to-Market Road 565 and Farm-to-Market Road 1409; or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 563; or

(E) in the case of wetlands bordering the portion of the Neches River described by Paragraph (B):

(i) within one mile from the mean high tide line of the western shoreline of that portion of the river described by Paragraph (B); or

(ii) within the area located between the mean high tide line on the eastern shoreline of that portion of the river and Farm-to-Market Road 105.

(8) "Critical area" means a coastal wetland, an oyster reef, a hard substrate reef, submerged aquatic vegetation, or a tidal sand or mud flat.

(9) "Critical dune area" means a protected sand dune complex on the Gulf shoreline within 1,000 feet of mean high tide designated by the land commissioner under Section 63.121.

(10) "Critical erosion area" has the meaning assigned to the term "critical coastal erosion area" by Section 33.601(4).

(11) "Gulf beach" means a beach bordering the Gulf of Mexico that is:

(A) located inland from the mean low tide line to the natural line of vegetation bordering the seaward shore of the Gulf of Mexico; or

(B) part of a contiguous beach area to which the public has a right of use or easement:

(i) continuously held by the public; or

(ii) acquired by the public by prescription, dedication, or estoppel.

(12) "Hard substrate reef" means a naturally occurring hard substrate formation, including a rock outcrop or serpulid worm reef, living or dead, in an intertidal or subtidal area.

(13) "Oyster reef" means a natural or artificial formation that is:

(A) composed of oyster shell, live oysters, and other living or dead organisms;

(B) discrete, contiguous, and clearly distinguishable from scattered oyster shell or oysters; and

(C) located in an intertidal or subtidal area.

(14) "Special hazard area" means an area designated under 42 U.S.C. Section 4001 et seq. as having special flood, mudslide or mudflow, or flood-related erosion hazards and shown on a flood hazard boundary map or flood insurance rate map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E.

(15) "Submerged land" means land located under waters under tidal influence or under waters of the open Gulf of Mexico, without regard to whether the land is owned by the state or a person other than the state.

(16) "Submerged aquatic vegetation" means rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems.

(17) "Tidal sand or mud flat" means a silt, clay, or sand substrate, without regard to whether it is vegetated by algal mats, that occur in intertidal areas and that are regularly or intermittently exposed and flooded by tides, including tides induced by weather.

(18) "Water of the open Gulf of Mexico" means water in this state, as defined by Section 26.001(5), Water Code, that is part of the open water of the Gulf of Mexico and that is within the territorial limits of the state.

(19) "Water under tidal influence" means water in this state, as defined by Section 26.001(5), Water Code, that is subject to tidal influence according to the Texas Natural Resource Conservation Commission's stream segment map. The term includes coastal wetlands.

(20) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(3), eff. September 1, 2011.

(21) "Agency or subdivision" means any state agency, department, board, or commission or political subdivision of the state.

(22) "Coastal management program " means an ongoing, comprehensive program containing the elements required for approval of a program under the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.) that is designed to coordinate agencies' management of activities that may adversely affect coastal natural resource areas for the purpose of continually making management of those activities more efficient and effective.

(23) "Agency or subdivision action" means an action described by Section 33.2051 or 33.2053.

(24) "Federal agency activity" means a function performed by or for a federal agency in the exercise of its statutory responsibility, including financial assistance, the planning, construction, modification, or removal of a public work, facility, or any other structure, and the acquisition, use, or disposal of land or water resources. The term does not include the issuance of a federal license or permit.

(25) "Federal agency action" means a license or permit that a federal agency may issue that represents the proposed federal authorization, approval, or certification needed by the applicant to begin an activity.

(26) "Proposed action" means an agency or subdivision action under consideration by the agency or subdivision, but with respect to which the agency or subdivision has not made a final decision.

(27) "Outer continental shelf plan" means a plan for the exploration or development of, or production from, an area leased under the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331 et seq.) and the rules adopted under that Act that is submitted to the secretary of the United States Department of the Interior after federal approval of the coastal management program.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 11.264, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 1997, 75th Leg., ch. 396, Sec. 1, eff. May 28, 1997; Acts 1999, 76th Leg., ch. 508, Sec. 4, eff. Sept. 1, 1999; Acts 2001, 77th

Leg., ch. 70, Sec. 2, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(3), eff. September 1, 2011.

Sec. 33.204. ADMINISTRATION OF COASTAL MANAGEMENT PROGRAM. (a) The commissioner by rule shall adopt goals and policies of the coastal management program. A goal or policy may not require an agency or subdivision to perform an action that would exceed the constitutional or statutory authority of the agency or subdivision to which the goal or policy applies.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(4), eff. September 1, 2011.

(e) In conducting consistency reviews under Section 33.205, the commissioner shall receive and consider the oral or written testimony of any person regarding the coastal management program as the testimony relates to the agency or subdivision action or federal agency action or activity or outer continental shelf plan under review. The commissioner may reasonably limit the length and format of the testimony and the time at which it will be received. Notice of the period during which the testimony will be received shall be published in the Texas Register and in a newspaper of general circulation in each county directly affected by the matter under review before the commencement of that period. The commissioner shall consider only the record before the agency or subdivision involved in the matter under review, the agency's or subdivision's findings, applicable laws and rules, any additional information provided by that agency or subdivision, and public testimony under this subsection, provided that if the agency or subdivision did not hold a hearing, make a record, or make findings, the commissioner may hold a hearing and make findings necessary to a complete and thorough review.

(f) The land office, in coordination with other agencies and subdivisions, shall prepare a biennial report on the effectiveness of the coastal management program. On or before January 15 of each odd-

numbered year, the land office shall send the report to the legislature.

(g) The commissioner may award grants to projects that further the goals and policies of the coastal management program. The commissioner shall establish the procedures for making any determination related to awarding a grant.

Added by Acts 1979, 66th Leg., p. 1991, ch. 785, Sec. 1, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 22 (S.B. 803), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 8, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(4), eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 259 (H.B. 622), Sec. 1, eff. June 14, 2013.

Sec. 33.2041. COASTAL COORDINATION ADVISORY COMMITTEE. (a) The commissioner by rule shall establish the Coastal Coordination Advisory Committee to advise the commissioner on matters related to the coastal management program. The committee shall consist of:

(1) a representative of each of the following entities designated by the presiding officer of that entity:

(A) the land office;

(B) the Parks and Wildlife Department;

(C) the Texas Commission on Environmental Quality;

(D) the Railroad Commission of Texas;

(E) the Texas Water Development Board;

(F) the Texas Department of Transportation;

(G) the State Soil and Water Conservation Board; and

(H) the Texas Sea Grant College Program to serve as a nonvoting member; and

(2) the following members to be appointed by the commissioner:

(A) a city or county elected official who resides in

the coastal area;

(B) an owner of a business located in the coastal area who resides in the coastal area;

(C) a resident from the coastal area; and

(D) a representative of agriculture.

(b) The commissioner by rule shall establish the terms of office for and duties of committee members.

(c) Chapter 2110, Government Code, does not apply to the size, composition, or duration of the committee.

Added by Acts 2001, 77th Leg., ch. 70, Sec. 4, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 9, eff. September 1, 2011.

Sec. 33.205. CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM; COMMISSIONER REVIEW. (a) An agency or subdivision that takes an agency or subdivision action described by Section 33.2051 or 33.2053 that may adversely affect a coastal natural resource area shall comply with the goals and policies of the coastal management program.

(b) An agency or subdivision subject to the requirements of Subsection (a) shall affirm that it has taken into account the goals and policies of the coastal management program by issuing a written determination that a proposed agency or subdivision action described by Section 33.2051 or 33.2053 is consistent with the program goals and policies.

(c) The commissioner may review a proposed agency or subdivision action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the coastal management program if:

(1) the consistency determination for the proposed action was contested by:

(A) a member of the committee or an agency that was a party in a formal hearing under Chapter 2001, Government Code, or in an alternative dispute resolution process; or

(B) another person by the filing of written comments with the agency before the action was proposed if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available;

(2) a person described by Subdivision (1) files a request for referral alleging a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program; and

(3) any three members of the committee other than the representative of the Texas Sea Grant College Program agree that there is a significant unresolved dispute regarding the proposed action's consistency with the goals and policies of the coastal management program and the matter is referred to the commissioner for review.

(d) If consistency review thresholds are in effect under Section 33.2052, the commissioner may not review a proposed action subject to the requirements of Subsections (a) and (b) for consistency with the goals and policies of the coastal management program unless the requirements of Subsection (c) are satisfied and:

(1) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is available:

(A) the action exceeds the applicable thresholds and the agency's consistency determination was contested in a formal hearing or in an alternative dispute resolution process; or

(B) the action does not exceed the applicable thresholds but may directly and adversely affect a critical area, critical dune area, coastal park, wildlife management area or preserve, or gulf beach and a state agency contested the agency's consistency determination in a formal hearing; or

(2) if the proposed action is one for which a formal hearing under Chapter 2001, Government Code, is not available to contest the agency's determination, the action exceeds the applicable thresholds.

(e) The commissioner must consider and act on a matter referred under Subsection (c) or (d) before the 26th day after the date the agency or subdivision proposed the action. For purposes of this section, an action subject to the contested case provisions of Chapter 2001, Government Code, is proposed when notice of a decision or order is issued under Section 2001.142, Government Code.

(f) The commissioner by rule shall establish a process by which an applicant for a permit or other proposed action described in Section 33.2053, or an agency or subdivision proposing an action, may request and receive a preliminary consistency review. The rules shall:

(1) create a permitting assistance group composed of representatives of committee member agencies and other interested committee members to coordinate the preliminary reviews; and

(2) require that the following written information be produced not later than the 45th day after the date of the request for preliminary review:

(A) a statement from each agency or subdivision required to permit or approve the project as to whether the agency or subdivision anticipates approving or denying the application;

(B) if an agency or subdivision intends to deny an application, the agency's or subdivision's explanation of the grounds for denial and recommendations for resolving the grounds in a way that would allow the application to be approved;

(C) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program; and

(D) if the project is likely to be found inconsistent with the goals and policies of the coastal management program, an explanation and recommendation for resolving the inconsistency in a way that would allow the project to be found consistent.

(f-2) The commissioner may adopt rules as necessary to:

(1) restructure or abolish the permitting assistance group;

(2) expand the functions of the permitting assistance group; or

(3) add members to the permitting assistance group.

(g) The commissioner by rule shall establish a process by which an individual or small business may request and receive assistance with filing applications for permits or other proposed actions described by Section 33.2053. The rules shall provide for:

(1) the coordination of preapplication assistance through the permitting assistance group; and

(2) the provision of the following, by the permitting assistance group, to an individual or a small business, on request:

(A) a list of the permits or other approvals necessary for the project;

(B) a simple, understandable statement of all permit requirements;

(C) a coordinated schedule for each agency's or subdivision's decision on the action;

(D) a list of all the information the agencies or subdivisions need to declare the applications for the permits or other approvals administratively complete;

(E) assistance in completing the applications as needed; and

(F) if enough information is already available, a preliminary finding as to whether the project is likely to be found consistent with the goals and policies of the coastal management program.

(h) If an agency, subdivision, or applicant has received a preliminary finding of consistency under Subsection (f)(2)(C) or (g)(2)(F) and a request for referral was filed on that action under Subsection (c)(2), the commissioner may accept the request for referral only if the agency or subdivision has substantially changed the permit or proposed action since the preliminary finding was issued.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 5, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 11, eff. September 1, 2011.

Sec. 33.2051. AGENCY RULEMAKING ACTIONS. (a) The land office shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing the prevention of, response to, or remediation of a coastal oil spill.

(b) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing:

(1) air pollutant emissions;

(2) on-site sewage disposal systems; or

(3) underground storage tanks.

(c) The State Soil and Water Conservation Board shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing agricultural or silvicultural nonpoint source pollution.

(d) An agency shall comply with Sections 33.205(a) and (b) when adopting or amending a rule governing an individual action described by Section 33.2053.

(e) The commissioner may not review a proposed rule of the Department of Agriculture.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 12, eff. September 1, 2011.

Sec. 33.2052. CERTIFICATION OF AGENCY RULES; AGENCY ACTIONS CONSIDERED CONSISTENT. (a) The commissioner by rule shall establish and may modify a process by which an agency may submit rules and rule amendments described by Section 33.2051 to the commissioner for review and certification for consistency with the goals and policies of the coastal management program.

(b) The process must provide that an agency may submit to the commissioner consistency review thresholds for the agency's actions described in Section 33.2053. After the commissioner certifies that an agency's rules are consistent and approves the agency's thresholds, the agency's consistency determination under Section 33.205(b) for an action is final and is not subject to referral and review, except as provided by Section 33.205(d).

(c) The commissioner by rule shall provide that the commissioner may revoke a certification under Subsection (b) if the commissioner finds that an agency has:

(1) implemented certified rules in a manner that conflicts with the goals and policies of the coastal management program; or

(2) amended certified rules in a manner inconsistent with the goals and policies of the coastal management program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 13, eff. September 1, 2011.

Sec. 33.2053. INDIVIDUAL AGENCY OR SUBDIVISION ACTIONS. (a) The land office, the School Land Board, or a board for lease of

state-owned lands shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) a mineral lease plan of operations;

(2) a geophysical or geochemical permit;

(3) a coastal easement;

(4) a miscellaneous easement;

(5) a coastal lease;

(6) a surface lease;

(7) a structure registration;

(8) a cabin permit;

(9) a navigation district lease;

(10) certification of a local government beach access or dune protection plan; or

(11) an agency or subdivision wetlands mitigation bank.

(b) The Public Utility Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing a certificate of convenience and necessity.

(c) The Railroad Commission of Texas shall comply with Sections 33.205(a) and (b) when issuing:

(1) a wastewater discharge permit;

(2) a waste disposal or storage pit permit; or

(3) a certification of a federal permit for the discharge of dredge or fill material.

(d) The Texas Transportation Commission shall comply with Sections 33.205(a) and (b) when approving:

(1) an acquisition of a site for the placement or disposal of dredge material from, or the expansion, relocation, or alteration of, the Gulf Intracoastal Waterway; or

(2) a transportation construction project or maintenance program.

(e) The Texas Historical Commission and the Antiquities Committee shall comply with Sections 33.205(a) and (b) when issuing:

(1) a permit for destruction, alteration, or taking of a coastal historic area; or

(2) a review of a federal undertaking affecting a coastal historic area.

(f) The Texas Natural Resource Conservation Commission shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) a wastewater discharge permit;

(2) a permit for a new concentrated animal feeding

operation located one mile or less from a critical area or coastal waters;

(3) a permit for solid or hazardous waste treatment, storage, or disposal;

(4) creation of a special purpose district or approval of bonds for the purpose of construction of infrastructure on coastal barriers;

(5) levee improvement or flood control projects;

(6) a certification of a federal permit for the discharge of dredge or fill material;

(7) a declaration of an emergency and request for an emergency release of water;

(8) a new permit for an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast;

(9) an amendment to a water permit for an increase in an annual appropriation of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast; or

(10) a change in the purpose of use of an annual appropriation of water to a more consumptive use of:

(A) 5,000 or more acre-feet of water within the program boundary; or

(B) 10,000 or more acre-feet of water outside the program boundary but within 200 stream miles of the coast.

(g) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 96, Sec. 19(9), eff. September 1, 2011.

(h) The Parks and Wildlife Department shall comply with Sections 33.205(a) and (b) when issuing or approving:

(1) an oyster lease;

(2) a permit for taking, transporting, or possessing threatened or endangered species;

(3) a permit for disturbing marl, sand, shell, or gravel on state-owned land; or

(4) development by a person other than the Parks and Wildlife Department that requires the use or taking of any public

land in a state park, wildlife management area, or preserve.

(i) A subdivision shall comply with Sections 33.205(a) and (b) when issuing a dune protection permit or beachfront construction certificate that authorizes:

(1) construction activity that is located 200 feet or less landward of the line of vegetation and that results in the disturbance of more than 7,000 square feet of dunes or dune vegetation;

(2) construction activity that results in the disturbance of more than 7,500 cubic yards of dunes;

(3) a coastal shore protection project undertaken on a gulf beach or 200 feet or less landward of the line of vegetation and that affects more than 500 linear feet of gulf beach; or

(4) a closure, relocation, or reduction in existing public beach access or public beach access designated in an approved local government beach access plan, other than for a short term.

(j) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval, or other action is not an action under this section if the action is taken under a rule that the commissioner has certified under Section 33.2052 and:

(1) for a wastewater discharge permit, if the action is not a major permit modification that would:

(A) increase pollutant loads to coastal waters; or

(B) result in relocation of an outfall to a critical area;

(2) for solid, hazardous, or nonhazardous waste permits, if the action is not a Class III modification under rules of the Texas Commission on Environmental Quality; or

(3) for any other action, if the action:

(A) only extends the period of the existing authorization and does not authorize new or additional work or activity; or

(B) is not directly relevant to Sections 33.205(a) and (b).

(k) The commissioner shall establish a program boundary to limit the geographic area in which the requirements of Sections 33.205(a) and (b) apply. The boundary is the coastal facility designation line as defined by Appendix 1 to 31 TAC Section 19.2 as that appendix existed on the effective date of this section, as modified by Section 33.203(7). Except as provided by Subsections

(f)(8)-(10), this subchapter does not apply to an agency action authorizing an activity outside the program boundary.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 14, eff. September 1, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 19(9), eff. September 1, 2011.

Sec. 33.206. ACTION BY COMMISSIONER OR ATTORNEY GENERAL. (a) A proposed action is consistent with the goals and policies of the coastal management program and approved by the commissioner unless the commissioner determines the action to be inconsistent with the coastal management program and protests the action.

(b) If the commissioner protests the proposed action, the commissioner shall report the commissioner's findings on the matter to the agency or subdivision. The report shall specify how the proposed action is inconsistent with the goals and policies of the coastal management program and include specific recommendations of the commissioner regarding how the proposed action may be modified or amended to make it consistent with the program. Before the 21st day after the date the agency or subdivision receives the report, the agency or subdivision shall review the findings and recommendations and determine whether to modify or amend the proposed action to make it consistent with the goals and policies of the coastal management program and shall notify the commissioner of its decision.

(c) If an agency or subdivision does not modify or amend a proposed action to be consistent with the goals and policies of the coastal management program, the commissioner shall request the attorney general to issue an opinion on the consistency of the proposed action with the coastal management program. The agency or subdivision is stayed from taking the proposed action until the attorney general issues the opinion. The attorney general shall issue an opinion before the 26th day after the date the commissioner requests the opinion.

(d) The commissioner shall adopt guidance and procedural rules for the review of federal actions, activities, and outer continental shelf plans that incorporate the provisions of federal regulations

governing those reviews. The guidance and rules shall provide that the commissioner or any three committee members may request additional information from a federal agency or additional time for review as provided by the federal regulations.

(e) The commissioner shall review any federal action, activity, or outer continental shelf plan that any three committee members agree presents a significant unresolved issue regarding consistency with the goals and policies of the coastal management program.

(f) If an activity requiring an agency or subdivision action described by Section 33.2053 that falls above thresholds in effect under Section 33.2052 also requires an equivalent federal permit or license, the commissioner may determine the consistency of the agency or subdivision action or the federal license or permit, but not both. The determination regarding the consistency of an action made by the commissioner under this subsection constitutes the state's determination regarding consistency of the equivalent agency or subdivision action or federal action.

(g) Notwithstanding the other provisions of this subchapter, on request for referral, the commissioner may not review a consistency determination of the land office, the commissioner, or the board. The commissioner shall refer a request for a review of the consistency of such an action to the attorney general not later than the second day after the date the commissioner receives the request. The attorney general shall determine whether the action is consistent with the goals and policies of the coastal management program in accordance with the applicable provisions of this subchapter governing determinations by the commissioner. If the attorney general determines the action to be inconsistent with the goals and policies of the coastal management program, the attorney general may protest the action in accordance with the provisions of this subchapter governing protests by the commissioner. A protest by the attorney general has the same effect as a protest by the commissioner. The attorney general may adopt rules as necessary to implement this subsection.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 15, eff. September 1, 2011.

Sec. 33.207. COMMISSIONER RECOMMENDATIONS. In addition to the report required by Section 33.206, the commissioner:

(1) may periodically submit recommendations to an agency or subdivision designed to encourage the agency or subdivision to carry out its functions in a manner consistent with the coastal management program, including recommendations for methods to simplify governmental procedures and changes in applicable rules or statutes; and

(2) shall report to the legislature on:

(A) recommended statutory changes needed to make more effective and efficient use of public funds and provide for more effective and efficient management of coastal natural resource areas, including recommendations on methods to simplify governmental procedures;

(B) agency or subdivision actions that are not consistent with the coastal management program; and

(C) population growth of, infrastructure needs of, and use of resources on the coast.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995; Acts 2001, 77th Leg., ch. 70, Sec. 6, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 16, eff. September 1, 2011.

Sec. 33.208. ENFORCEMENT. (a) The agency or subdivision with jurisdiction over a proposed action shall enforce the provisions of the coastal management program.

(b) If the attorney general issues an opinion under Section 33.206(c) that a proposed agency or subdivision action is inconsistent with the coastal management program and the agency or subdivision fails to implement the commissioner's recommendation regarding the action, the attorney general shall file suit in a district court of Travis County to enforce this subchapter. The court shall consider the attorney general's opinion in determining

whether the proposed action is consistent with the coastal management program.

(c) Notwithstanding the request of an opinion from, or the filing of suit by, the attorney general, the commissioner and the agency or subdivision may enter into a settlement agreement with regard to the proposed agency or subdivision action. If the commissioner and the agency or subdivision enter into a settlement agreement, the commissioner may rescind the commissioner's request for an opinion from the attorney general.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 37, eff. June 7, 1991.
Amended by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 17, eff. September 1, 2011.

Sec. 33.209. PROHIBITION ON SPECIAL AREA MANAGEMENT PLANS. The land office may not develop or approve a special area management plan, including a plan for an area designated under the national estuary program.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 96 (S.B. 656), Sec. 18, eff. September 1, 2011.

Sec. 33.210. PRIVATE PROPERTY. The requirements of this subchapter may not be applied in a manner that would result in the taking, damage, or destruction of property without adequate compensation.

Added by Acts 1995, 74th Leg., ch. 416, Sec. 4, eff. June 8, 1995.

SUBCHAPTER G. COASTAL WETLAND ACQUISITION

Sec. 33.231. SHORT TITLE. This subchapter may be cited as the Coastal Wetland Acquisition Act.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June

13, 1979.

Sec. 33.232. POLICY. It is the declared policy of the state:

(1) to protect the property rights of those who sell interests in land to the state by fairly compensating the sellers;

(2) to protect that coastal wetland which is most essential to the public interest by acquiring fee and lesser interests in the coastal wetland and managing it in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland; and

(3) to assure that the state does not expend funds to acquire any coastal wetland to which it already holds a valid title at the time of the expenditure.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.233. DEFINITIONS. In this subchapter:

(1) "Acquiring agency" means the Parks and Wildlife Department.

(2) "Land office " means the General Land Office.

(3) "Coastal wetland" means wetlands underlying or adjacent to tidal waters in the coastal area.

(4) "Wetlands" has the meaning assigned under Subchapter J, Chapter 11, Water Code.

(5) "Seawater" means any water containing a concentration of one-twentieth of one percent or more by weight of total dissolved inorganic salts derived from the marine water of the Gulf of Mexico.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 4, eff. June 5, 1991.

Sec. 33.234. DUTIES AND AUTHORITY OF ACQUIRING AGENCY. (a) The acquiring agency shall do the following:

(1) accept gifts, grants, or devises of interests in land;

(2) acquire, by purchase or condemnation, fee and lesser interests in the surface estate in coastal wetland certified as most

essential to protection of the public interest, provided that in each instance in which an interest in land is acquired by the acquiring agency pursuant to this section, a sufficient interest shall be acquired to preserve and protect the productivity and integrity of such land as coastal wetland; and

(3) manage interests in land acquired pursuant to this section in a manner that will preserve and protect the productivity and integrity of the land as coastal wetland.

(b) This subchapter shall not be construed to authorize the condemnation of any interest in the mineral estate in any coastal wetland.

(c) The acquiring agency shall promulgate reasonable rules and regulations necessary to preserve and protect the productivity and integrity of the land as coastal wetland acquired pursuant to this subchapter. The rules and regulations shall include regulations governing activities conducted on the land in conjunction with mineral exploration, development, and production.

(d) If the acquiring agency seeks to condemn an interest less than the fee interest in the surface estate in any coastal wetland, the owner of the coastal wetland may demand that the acquiring agency instead seek condemnation of the fee interest in the surface estate in the coastal wetland. Upon this demand, the acquiring agency shall either:

(1) seek to condemn the fee interest in the surface estate in the coastal wetland; or

(2) cease all condemnation proceedings pursuant to this subchapter against the coastal wetland.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 5, eff. June 5, 1991.

Sec. 33.235. AGRICULTURAL EXEMPTION. Coastal wetland used only for farming or ranching activities, including maintenance and repair of buildings, earthworks, and other structures, shall not be subject to any power of condemnation exercised pursuant to this subchapter. However, this exemption from condemnation shall terminate upon the receipt by any state or federal agency of an application for a permit, license, or other authorization to conduct on the wetland,

activities other than farming and ranching activities, including irrigation and water well drilling, and activities necessary to exploration, development, or production of the underlying mineral estate.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

Sec. 33.236. DUTIES AND AUTHORITY TO CERTIFY. (a) The land office and the acquiring agency, in coordination, shall do the following:

(1) certify coastal wetlands which are most essential to the public interest in accordance with criteria developed by the land office and the acquiring agency under Chapter 14, Parks and Wildlife Code, and this subchapter, assign priorities for acquisition of interests in the coastal wetland, and revoke certification made pursuant to this section when it is in the public interest to do so; and

(2) publicize the importance to the public interest of coastal wetland in general, and of designated coastal wetland in particular.

(b) A certification, assignment of priority for acquisition, or revocation of certification made pursuant to this subchapter does not constitute a "contested case" within the meaning of Chapter 2001, Government Code.

(c) to (h) Repealed by Acts 1991, 72nd Leg., ch. 265, Sec. 7, eff. June 5, 1991.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Secs. 6, 7, eff. June 5, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 33.237. MOST ESSENTIAL COASTAL WETLAND CERTIFICATION. (a) In selecting and certifying coastal wetland most essential to the public interest, and in assigning priorities of acquisition to coastal wetland, the land office and the acquiring agency shall consider the following criteria:

(1) whether the land is coastal wetland within the

definition, intent, and purpose of this subchapter;

(2) whether the state owns the coastal wetland or claims title to it, which title can be validated by bringing an appropriate action in a court of law;

(3) whether the biological, geological, or physical characteristics of the coastal wetland, including the interrelationship of the coastal wetland with other coastal wetland, is essential to the public interest;

(4) the degree to which the coastal wetland is in danger of being altered, damaged, or destroyed, and the imminence of that danger; and

(5) the cost of acquiring the coastal wetland.

(b) The legislature declares that certifications, assignments of priority for acquisition, and revocations of certifications made pursuant to Section 33.235 of this code are made only for the purpose of administering the provisions of this subchapter. No certifications, assignments of priority for acquisition, or revocations of certification shall be grounds for an inference, or admissible in a court of law to prove, that any coastal wetland is of greater or lesser value than any other coastal wetland for any purpose other than administering the provisions of this subchapter.

(c) A certification made pursuant to this subchapter shall expire one year from the date of certification.

(d) If on or before the expiration date of such certification the acquiring agency files suit in a court of law to condemn the certified coastal wetland, the certification shall extend until the suit is settled, dismissed, or otherwise terminated.

(e) If a contract of sale between the state and the owner of the certified coastal wetland is entered into on or before the expiration date of the certification, the certification shall extend until title to the coastal wetland is conveyed to the state or the contract is rescinded, invalidated, or otherwise terminated.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979. Amended by Acts 1991, 72nd Leg., ch. 265, Sec. 8, eff. June 5, 1991.

Sec. 33.238. FUNDING. The acquiring agency may compensate the seller of land acquired pursuant to this subchapter with funds

obtained through:

(1) gift, grant, or devise;

(2) legislative appropriation; or

(3) gift or grant from the United States.

Added by Acts 1979, 66th Leg., p. 1993, ch. 785, Sec. 2, eff. June 13, 1979.

SUBCHAPTER H. COASTAL EROSION

Sec. 33.601. DEFINITIONS. In this subchapter:

(1) "Account" means the coastal erosion response account established under Section 33.604.

(2) "Beach nourishment" means the placement of beach-quality sediment on an eroded beach to restore it as a recreational beach, provide storm protection for upland property, maintain a restored beach by the replacement of sand, or serve other similar beneficial purposes.

(3) "Coastal erosion" means the loss of land, marshes, wetlands, beaches, or other coastal features within the coastal zone because of the actions of wind, waves, tides, storm surges, subsidence, or other forces.

(4) "Critical coastal erosion area" means a coastal area that is experiencing historical erosion, according to the most recently published data of the Bureau of Economic Geology of The University of Texas at Austin, that the commissioner finds to be a threat to:

(A) public health, safety, or welfare;

(B) public beach use or access;

(C) general recreation;

(D) traffic safety;

(E) public property or infrastructure;

(F) private commercial or residential property;

(G) fish or wildlife habitat; or

(H) an area of regional or national importance.

(5) "Erosion response project" means an action intended to address or mitigate coastal erosion, including beach nourishment, sediment management, beneficial use of dredged material, creation or enhancement of a dune, wetland, or marsh, and construction of a breakwater, bulkhead, groin, jetty, or other structure.

(6) "Hard structure" means an erosion response structure such as a bulkhead, seawall, revetment, jetty, groin, or similar structure that is the functional equivalent of one of those structures.

(7) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(8) "Local government" means a political subdivision of this state.

(9) "Project cooperation agreement" means a contract executed by the land office and a qualified project partner that explicitly defines the terms under which a study or project will be conducted.

(10) "Public beach" has the meaning assigned by Section 61.013.

(11) "Qualified project partner" means a local government, state or federal agency, institution of higher education, homeowners' association, or other public or private entity that enters into an agreement with the land office to finance, study, design, install, or maintain an erosion response project.

(12) "Shared project cost" means a project cost identified by the commissioner and established in a project cooperation agreement that will be shared with a qualified project partner.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.602. COASTAL EROSION DUTIES AND AUTHORITY. (a) The land office shall implement a program of coastal erosion avoidance, remediation, and planning. The commissioner shall ensure that erosion avoidance, remediation, and planning protect the common law rights of the public in public beaches as affirmed by Subchapter B, Chapter 61.

(b) The commissioner shall publish and periodically update a coastal erosion response plan. The commissioner shall develop the plan in coordination with state and federal agencies and local governments and provide for public input on the plan. The plan must identify critical coastal erosion areas designated by the commissioner and prioritize coastal erosion response studies and projects so that:

(1) benefits are balanced among areas throughout the coast

designated by the commissioner as critical coastal erosion areas;

(2) federal and local financial participation is maximized;

(3) studies and projects are scheduled to achieve efficiencies and economies of scale; and

(4) the severity of erosion effects in each area is taken into account.

(c) The commissioner may adopt rules necessary to implement this subchapter.

(d) The commissioner shall adopt rules requiring that beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state be placed on eroding beaches or to restore eroding wetlands wherever practicable.

(e) In order to determine which areas should be designated as critical coastal erosion areas and guide the allocation of resources, the commissioner may conduct a coast-wide analysis of the costs and benefits of coastal erosion avoidance, remediation, and planning. An analysis conducted under this subsection may consider:

(1) historical erosion rates in an area;

(2) the elevation of an area adjacent to the shoreline;

(3) the presence of critical infrastructure in an area adjacent to the shoreline;

(4) the population density of an area adjacent to the shoreline;

(5) the presence of economic activity conducted in an area adjacent to the shoreline;

(6) the presence of critical natural resources in an area adjacent to the shoreline;

(7) anthropogenic contributions to erosion; and

(8) any other factor identified as relevant by the commissioner.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.601 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1405, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 15 (H.B. 2074), Sec. 1, eff. September 1, 2009.

Sec. 33.603. COASTAL EROSION STUDIES AND PROJECTS. (a) The land office shall undertake coastal erosion studies, demonstration projects, and response projects if the land office receives legislative appropriations or other funding for that purpose. If reasonable and appropriate, the land office shall work in conjunction with other state agencies, local governments, federal agencies, including the United States Army Corps of Engineers, or other qualified project partners in undertaking those studies and projects.

(b) The studies and projects shall address:

(1) assessment of the feasibility, cost, and financing of different methods of avoiding, slowing, or remedying coastal erosion;

(2) beneficial placement of dredged material where appropriate to replenish eroded public beach, bay shore, marsh, and dune areas;

(3) public beach, bay shore, and marsh nourishment or restoration projects using sediments other than material from navigational or other dredging projects;

(4) guidelines on grain size and toxicity level;

(5) the economic, natural resource, and other benefits of coastal erosion projects;

(6) the protection, revegetation, and restoration of dunes;

(7) the planting of vegetation as a means of inhibiting bay shore erosion and projects developing and cultivating disease-resistant vegetation adapted to local conditions;

(8) the construction or retrofitting of dams, jetties, groins, and other impoundment structures, provided that the structures include sediment bypassing systems;

(9) estimating the quantity and quality of sediment trapped by reservoirs, navigation channels, and placement areas and identification of other sediment sources;

(10) the use of hard or soft structures on bay shorelines as a method of avoiding, slowing, or remedying erosion;

(11) storm damage mitigation, post-storm damage assessment, and debris removal;

(12) removal and relocation of structures from public beaches, including the purchase of property located on a public beach;

(13) the acquisition of property necessary for the construction, reconstruction, maintenance, widening, or extension of an erosion response project under this subchapter;

(14) structural shoreline protection projects that use innovative technologies designed or engineered to minimize beach scour; and

(15) other studies or projects the commissioner considers necessary or appropriate to implement this subchapter.

(c) An agreement between the commissioner and a qualified project partner to undertake a coastal erosion response study or project:

(1) must require the qualified project partner to pay a specified percentage of the shared project cost that is not less than the minimum amount prescribed by Subsection (e):

(A) before completion of the project; or

(B) following completion of the project, in accordance with a schedule provided by the agreement; and

(2) may contain other terms governing the study or project.

(d) Except as provided by Subsections (b)(8) and (14), this chapter does not authorize the construction or funding of a hard structure on or landward of a public beach.

(e) A qualified project partner must pay:

(1) not less than 25 percent of the shared project cost if the project is a beach nourishment project on a public beach or bay shore; and

(2) not less than 40 percent of the shared project cost if the project is any other coastal erosion response study or project, including:

(A) a marsh restoration project; or

(B) a bay shoreline protection project other than a beach nourishment project.

(f) Notwithstanding Subsections (c) and (e), each biennium the commissioner may undertake at least one erosion response project without requiring a qualified project partner to pay a portion of the shared project cost if the total cost of the projects that do not have a cost share requirement does not exceed one-half of the total amount appropriated to the land office for coastal erosion planning and response.

(g) Notwithstanding Subsection (d), each biennium the commissioner may undertake or provide funding for one or more erosion response demonstration projects if the state's portion of the shared project cost does not exceed one-tenth of the total amount appropriated to the land office for coastal erosion planning and

response.

(h) Notwithstanding Subsection (e), the commissioner may determine the percentage of the shared project cost a qualified project partner must pay for a project undertaken pursuant to Subsection (b)(11), (12), or (13).

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.602 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1404, Sec. 1, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 874, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 304 (S.B. 517), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1302 (H.B. 2387), Sec. 1, eff. September 1, 2009.

Sec. 33.604. COASTAL EROSION RESPONSE ACCOUNT. (a) The coastal erosion response account is an account in the general revenue fund that may be appropriated only to the commissioner and used only for the purpose of implementing this subchapter and administration of the coastal management program as provided in Subchapter F.

(b) The account consists of:

(1) all money appropriated for the purposes of this subchapter;

(2) grants to this state from the United States for the purposes of this subchapter;

(3) all money received by this state from the sale of dredged material; and

(4) penalties or costs collected under Section 61.0184 or 63.1814.

(b-1) In addition to the money described by Subsection (b), the account consists of money transferred to the account under Section 156.252, Tax Code. This subsection expires September 1, 2031.

(c) The account is exempt from the application of Section 403.095, Government Code.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 4, eff.

September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1018 (H.B. 6), Sec. 4, eff. September 1, 2019.

Sec. 33.605. USES OF ACCOUNT. (a) Money in the account may be used for:

(1) any action authorized by this subchapter; and

(2) the administration of the coastal management program as provided in Subchapter F.

(b) The commissioner must approve an expenditure from the account. In determining whether to approve an expenditure for a study or project, the commissioner shall consider:

(1) the amount of money in the account;

(2) the feasibility and cost-effectiveness of the study or project;

(3) the locations of other existing or proposed erosion response projects;

(4) the needs in other critical coastal erosion areas;

(5) the effect of the study or project on public or private property; and

(6) if the site to be studied or project to be conducted will be located within the jurisdiction of a local government subject to Chapter 61 or 63:

(A) whether the local government is adequately administering those chapters; and

(B) the plan for reducing public expenditures for erosion and storm damage losses prepared by the local government under Section 33.607.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 2, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 14 (H.B. 2073), Sec. 1, eff. September 1, 2009.

Sec. 33.606. GRANTS AND GIFTS. The commissioner may apply for, request, solicit, contract for, receive, and accept gifts, grants, donations, and other assistance from any source to carry out the powers and duties provided by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.603 by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.607. COASTAL EROSION PUBLIC AWARENESS AND EDUCATION; LOCAL GOVERNMENT PLANNING AND REGULATION. (a) The land office shall be responsible for and shall coordinate with other agencies to increase public awareness through public education concerning:

(1) the causes of erosion;

(2) the consequences of erosion;

(3) the importance of barrier islands, dunes, and bays as a natural defense against storms and hurricanes; and

(4) erosion avoidance techniques.

(b) On an ongoing basis, the commissioner, in consultation with the Bureau of Economic Geology of The University of Texas at Austin and coastal county and municipal governments, shall monitor historical erosion rates at each location along the shore of the Gulf of Mexico.

(c) The commissioner shall make historical erosion data accessible, through the Internet and otherwise, to the public and persons receiving the notice required under Section 61.025.

(d) The Bureau of Economic Geology of The University of Texas at Austin shall make historical erosion data relating to a critical coastal erosion area available to each state agency, local government, or other person responsible for, or with jurisdiction over, the area.

(e) A local government subject to Chapter 61 or 63 shall use historical erosion data and the coastal erosion response plan published by the commissioner under Section 33.602 to prepare a local plan for reducing public expenditures for erosion and storm damage losses to public and private property, including public beaches. A plan prepared under this subsection may include a building set-back line that will accommodate a shoreline retreat. The local government shall hold a public educational meeting on the plan before proposing

to implement it through the plans, orders, or ordinances provided by Chapters 61 and 63.

(f) A local plan for reducing public expenditures for erosion and storm damage losses to public and private property prepared under Subsection (e) may:

(1) preserve and enhance the public's right of access to and use of the public beach;

(2) preserve critical sand dunes for natural storm protection and conservation purposes;

(3) establish a building set-back line no further landward than the dune protection line established by the local government under Chapter 63;

(4) provide for the prohibition of new construction seaward of the building set-back line; and

(5) provide for the acquisition of fee title to or a lesser interest in property seaward of the building set-back line.

(g) The commissioner may adopt rules for the preparation and implementation by a local government of a local plan for reducing public expenditures for erosion and storm damage losses to public and private property under Subsection (e).

(h) Chapter 2007, Government Code, does not apply to a rule or local government order or ordinance authorized by this section.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 3, eff. June 7, 1991. Renumbered from Sec. 33.604 and amended by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 5, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 14 (H.B. 2073), Sec. 2, eff. September 1, 2009.

Sec. 33.608. REPORT TO LEGISLATURE. Each biennium, the commissioner shall submit to the legislature a report listing:

(1) each critical erosion area;

(2) each proposed erosion response study or project;

(3) an estimate of the cost of each proposed study or

project described by Subdivision (2);

(4) each coastal erosion response study or project funded under this subchapter during the preceding biennium;

(5) the economic and natural resource benefits from each coastal erosion response study or project described by Subdivision (4);

(6) the financial status of the account; and

(7) an estimate of the cost of implementing this subchapter during the succeeding biennium.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.609. LANDOWNER CONSENT. (a) The commissioner may not undertake a coastal erosion response project on:

(1) permanent school fund land without first obtaining the written consent of the school land board; or

(2) private property, other than that encumbered by the common law rights of the public affirmed by Chapter 61, without first obtaining the written consent of the property owner.

(b) If the commissioner cannot determine the identity of or locate a property owner, consent is considered to have been given if:

(1) the commissioner publishes a notice of the project at least once a week for two consecutive weeks in the newspaper having the largest circulation in the county in which the project is located; and

(2) the property owner does not object on or before the 20th day after the last date notice is published under Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.610. REMOVAL OF SUBMERGED LAND FROM APPRAISAL AND TAX ROLLS. (a) If the commissioner determines that land has become submerged by erosion or subsidence and as a result is dedicated to the permanent school fund, the commissioner may notify in writing the appraisal district that appraises the land for ad valorem tax purposes and each taxing unit that imposes taxes on the land. The notice must include a legal description of the land.

(b) On receipt of notice under Subsection (a):

(1) the appraisal district shall remove the land from the appraisal roll; and

(2) each taxing unit shall remove the land from its tax roll.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.611. IMMUNITY. (a) This state, the commissioner, and land office staff are immune from suit for damages and from liability for an act or omission related to:

(1) the approval, disapproval, funding, or performance of a coastal erosion response activity, including an erosion response study or project or a survey; or

(2) the failure of an erosion response project undertaken by the commissioner under this subchapter to fulfill its intended purpose.

(b) The immunity granted by this section does not apply to an act or omission that is intentional, wilfully or wantonly negligent, or committed with conscious indifference or reckless disregard for the safety of others.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.612. JUDICIAL REVIEW. (a) Judicial review of rights affected by an action of this state, the commissioner, or land office staff under this subchapter is under the substantial evidence rule. In order to prevail, a person seeking review must prove that the action complained of was arbitrary, capricious, or otherwise not in accordance with law.

(b) Venue for an action relating to this subchapter is in Travis County.

Added by Acts 1999, 76th Leg., ch. 508, Sec. 5, eff. Sept. 1, 1999.

Sec. 33.613. CLOSURE OR MODIFICATION OF CERTAIN MAN-MADE PASSES. (a) Notwithstanding Sections 66.204 and 81.103, Parks and Wildlife Code, the commissioner may undertake the closure or modification of a man-made pass or its environs between the Gulf of

Mexico and an inland bay if:

(1) the commissioner determines that the pass causes or contributes to significant erosion of the shoreline of the adjacent beach;

(2) the pass is not a public navigational channel constructed or maintained by the federal government; and

(3) the land office receives legislative appropriations or other funding for that purpose.

(b) If the closing of a man-made pass under this section results in a loss of public recreational opportunities, the commissioner shall develop, in consultation with the Parks and Wildlife Department and the county and, if applicable, the municipality in which the pass is located, and approve a plan to mitigate the loss. In developing the plan, the commissioner is strongly encouraged to assess the feasibility of installing fishing piers, boat ramps, and other facilities that provide public recreational opportunities. The plan must be presented to the public for comment before the commissioner approves it.

Added by Acts 2009, 81st Leg., R.S., Ch. 66 (S.B. 2043), Sec. 1, eff. September 1, 2009.

SUBCHAPTER I. COASTAL PROTECTION AND IMPROVEMENT

Sec. 33.651. DEFINITIONS. In this subchapter:

(1) "Bond" means any type of interest-bearing obligation, including a bond, note, bond anticipation note, certificate of participation, lease, contract, or other evidence of indebtedness issued by a coastal county to pay the project costs of a qualified project.

(2) "Coastal county" means a county that borders on the Gulf of Mexico.

(3) "Coastal erosion" has the meaning assigned by Section 33.601.

(4) "Coastal improvement project" means a project to improve access to a public beach by:

(A) acquiring fee title to property or a right of public access to a public beach;

(B) constructing or maintaining public roads, parking, or other facilities in aid of public access to or use of a public

beach;

(C) requiring a landowner, as prescribed by land office rules, to restore land affected by coastal erosion to its original boundaries; or

(D) implementing a building set-back line established under Section 33.607.

(5) "Coastal protection project" means a project to address or mitigate coastal erosion.

(6) "Coastal protection and improvement fund" means the coastal protection and improvement fund created under Section 33.653.

(7) "County coastal protection and improvement fund" means a county coastal protection and improvement fund created by a coastal county under Section 33.655.

(8) "Project cost" means a cost or expense incurred in relation to a qualified project, including the cost of:

(A) designing, engineering, acquiring, constructing, maintaining, improving, extending, repairing, replacing, monitoring, removing, or administering a qualified project; or

(B) financing a qualified project, including the cost of issuing bonds and the payment of principal, interest, and redemption price.

(9) "Public beach" has the meaning assigned by Section 61.013.

(10) "Qualified agreement" means an agreement between the land office and a coastal county in accordance with Section 33.657.

(11) "Qualified payment" means a payment by the commissioner to a coastal county from the coastal protection and improvement fund, as provided by this subchapter, that has been approved in amount and qualification for payment by the land office and the applicable coastal county.

(12) "Qualified project" means a coastal protection or improvement project that qualifies for funding under Section 33.656.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 7, eff. September 1, 2007.

Sec. 33.652. APPLICABILITY OF SUBCHAPTER TO CERTAIN MUNICIPALITIES. The provisions of this subchapter relating to coastal counties apply to a municipality if all or substantially all of the gulf beach within a coastal county is located within the boundaries of the municipality.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.653. CREATION OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund is created as a trust fund outside the state treasury to be held by the Texas Treasury Safekeeping Trust Company and administered by the commissioner as trustee on behalf of the coastal counties.

(b) The fund consists of:

(1) gifts and grants; and

(2) appropriations of money to the fund by the legislature.

(c) The commissioner shall allocate five percent of the amount deposited in the fund to the land office to be used only to pay the cost of administering any coastal protection and improvement efforts undertaken under this subchapter and to support a coastal monitoring program by The University of Texas Bureau of Economic Geology and the sea turtle and shore monitoring programs of Texas A&M University at Galveston.

(d) The commissioner shall allocate 95 percent of the amount deposited in the fund for use by the coastal counties as provided by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.654. USE OF COASTAL PROTECTION AND IMPROVEMENT FUND. (a) The coastal protection and improvement fund shall be used only to make a qualified payment to a coastal county sponsoring a qualified project under this subchapter.

(b) The commissioner may make a qualified payment from the fund to a coastal county only if and to the extent that the coastal county is sponsoring a project that qualifies for funding as certified by the coastal county and the land office.

(c) The amount and timing of a qualified payment shall be determined by agreement between the land office and the coastal county sponsoring the project. The amount of a qualified payment may not exceed the estimated project costs.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.655. COUNTY COASTAL PROTECTION AND IMPROVEMENT FUND. (a) Each coastal county shall create a county coastal protection and improvement fund.

(b) Each coastal county shall deposit any qualified payment that it receives into its county coastal protection and improvement fund and shall use the money in the fund only to pay the project costs of a qualified project as provided by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.656. PROJECTS THAT QUALIFY FOR FUNDING. To qualify for funding under this subchapter, a project must:

(1) be sponsored by a coastal county;

(2) be located within the sponsoring coastal county along or adjacent to the shore of the Gulf of Mexico, an inland bay, or a connecting channel between the Gulf of Mexico and an inland bay;

(3) be accessible by public roads or a common carrier ferry;

(4) be identified and approved for funding by a coastal county and the land office; and

(5) require more than $5 million to complete, as estimated by the land office, unless the project implements a building set-back line established under Section 33.607.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 8, eff. September 1, 2007.

Sec. 33.657. QUALIFIED AGREEMENT. (a) The land office and a coastal county may enter into one or more agreements relating to a qualified project and the payment of the associated project costs. An agreement is governed by this subchapter.

(b) An agreement may provide that the commissioner will pay to the coastal county an agreed amount from the coastal protection and improvement fund over a term of years to be used by the coastal county for a project that qualifies for funding under this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.658. QUALIFIED PAYMENT. (a) The commissioner shall make qualified payments to a coastal county based on the land office's estimate of the expected project costs of any qualified projects undertaken by that county in the fiscal year in which the payment is made.

(b) To the extent that the aggregate of qualified payments by the commissioner to a coastal county in a fiscal year exceeds the project costs of qualified projects undertaken by the county during that year, the commissioner shall recover the amount of the overpayment by:

(1) requiring the county to remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund; or

(2) taking a credit against qualified payments due that county the following year or years.

(c) If a coastal county that received an overpayment is not due additional qualified payments the following year, the county shall promptly remit the amount of the overpayment to the commissioner for deposit in the coastal protection and improvement fund.

(d) Notwithstanding Subsection (b), the commissioner may not take a credit against qualified payments due a coastal county the following year if the county needs the full amount of the qualified payment that year to:

(1) pay the principal or interest on, or the redemption price of, bonds issued to finance a qualified project; or

(2) fund a reserve or other fund required by the documents

authorizing the issuance of bonds.

(e) The failure of a coastal county to use the full amount of a qualified payment in the fiscal year in which it is received does not prejudice the right of the county to receive money from the coastal protection and improvement fund in future years as may be provided in the county's qualified agreement.

(f) A coastal county may not use a qualified payment as a local match for funding under a state program.

(g) A coastal county may use a qualified payment as a local match for funding under a federal program.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.659. GENERAL POWERS OF COASTAL COUNTIES. (a) In addition to all other powers that a coastal county has under general law, a coastal county has the rights, powers, privileges, authority, and functions that are necessary or convenient to:

(1) the designing, engineering, acquiring, constructing, improving, maintaining, extending, repairing, replacing, monitoring, removing, administering, and financing of a qualified project located in a coastal county;

(2) the funding of a reserve or other fund relating to bonds; and

(3) the establishment and implementation of a building set-back line under Section 33.607.

(b) A coastal county may issue bonds to pay the project costs of a qualified project. For purposes of this subchapter, a coastal county is an issuer and a qualified project is an eligible project within the meaning of Chapter 1371, Government Code, and the provisions of Chapter 1371, Government Code, are applicable to bonds issued by a coastal county.

(c) A coastal county may:

(1) enter into agreements with a public or private person for the joint ownership, financing, or operation of a qualified project;

(2) enter into contracts, leases, and agreements with, and accept grants and loans from, any person to perform all acts necessary for the full exercise of the powers vested in the county on

terms and for the term the county determines to be advisable;

(3) acquire property under a conditional sales contract, lease, equipment trust certificate, or other form of contract or trust agreement; and

(4) do anything necessary, convenient, or desirable to carry out the powers expressly granted or implied by this subchapter.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 9, eff. September 1, 2007.

Sec. 33.660. AUTHORITY TO CONTRACT. (a) A coastal county may contract with a state agency, municipality, county, or other political subdivision of the state or any agency or instrumentality of the federal government to implement a qualified project under this subchapter. A contract under this section may:

(1) be for a period on which the parties agree;

(2) include terms on which the parties agree; and

(3) be payable from taxes, qualified payments, or any other source of revenue available for that purpose.

(b) A coastal county may enter into a contract, lease, or agreement with or make or accept grants and loans to or from:

(1) the United States;

(2) the State of Texas;

(3) a county, municipality, or other political subdivision of the state;

(4) a public or private corporation; or

(5) any other person.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.661. FUNDS AVAILABLE FOR QUALIFIED PROJECTS. (a) A coastal county may pay the project costs of a qualified project from general or available funds, payments received from the land office, including payments from the coastal protection and improvement fund, contract reserves, ad valorem taxes, sales taxes, the proceeds of

bonds, or any combination of those funds.

(b) Payments made by the commissioner under this subchapter are in addition to any other funds to which the coastal county may be entitled under any other state law or program.

(c) This subchapter does not preclude a contribution to a qualified project from any state, federal, private, or other source.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.662. BONDS ELIGIBLE FOR PURCHASE. Bonds issued by a coastal county under this subchapter may be purchased by the Texas Water Development Board for purposes authorized by Chapter 17, Water Code.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

Sec. 33.663. CONSTRUCTION OF SUBCHAPTER. This subchapter shall be liberally construed to accomplish the purposes of mitigation of coastal erosion and improvement of public access to public beaches.

Added by Acts 2005, 79th Leg., Ch. 867 (S.B. 1044), Sec. 4, eff. June 17, 2005.

CHAPTER 34. BOARDS FOR LEASE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 34.001. DEFINITIONS. In this chapter:

(1) "Board" means a board for lease.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.002. APPLICATION OF CHAPTER. (a) The provisions of

this chapter apply to:

(1) land owned by the Parks and Wildlife Department, except as provided by Section 34.064(c); and

(2) land owned by the Texas Department of Criminal Justice.

(b) If title to land subject to the provisions of the Relinquishment Act is acquired by the Texas Parks and Wildlife Department or the Texas Department of Criminal Justice, the land is not subject to lease by a board created under the provisions of this chapter but shall be leased in the manner provided for the leasing of unsold public school land.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2572, ch. 686, Sec. 1, eff. Aug. 31, 1981; Acts 1985, 69th Leg., ch. 327, Sec. 1, eff. June 8, 1985; Acts 1985, 69th Leg., ch. 624, Sec. 25, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 167, Sec. 6.05(d), eff. Sept. 1, 1987.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.131, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 502 (H.B. 1449), Sec. 1, eff. June 17, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 34.011. BOARDS FOR LEASE. Boards for lease are created to lease land owned by the Texas Parks and Wildlife Department and the Texas Department of Criminal Justice.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 26, eff. Sept. 1, 1985.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.132, eff. September 1, 2009.

Sec. 34.012. TITLE OF BOARD. The title of each board shall be selected by each board for lease at its first meeting.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.013. MEMBERS OF BOARD. (a) The membership of each board shall include:

(1) the commissioner;

(2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the president or chairman of the board or agency or head of the department charged with the responsibility of management or control of land owned by or held in trust for the use and benefit of the department, agency, or board.

(b) The appointed member serves for a term of two years.

Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.0131. APPOINTMENTS WITHOUT DISCRIMINATION. Appointments to the board shall be made without regard to the race, color, handicap, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0132. DISQUALIFICATION OF LOBBYISTS. A person who is required to register as a lobbyist under Chapter 305 of the Government Code, by virtue of his activities for compensation in or on behalf of a profession related to the operation of the board, may not serve as a member of the board or act as the general counsel to the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(21), eff. Sept. 1, 1987.

Sec. 34.0133. CONFLICTS OF INTEREST PROHIBITED. An officer, employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry may not be a member or employee of the board, nor may a person who cohabits with or is

the spouse of an officer, managerial employee, or paid consultant of a statewide or national trade association in the oil and gas or mining industry be a member of the board or an employee of the board grade 17 and over, including exempt employees, according to the position classification schedule under the General Appropriations Act.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0134. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) of Section 34.013 of this code for appointment to the board;

(3) violates a prohibition established by Section 34.0132 or 34.0133 of this code;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

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

(c) If the commissioner has knowledge that a potential ground for removal exists, he shall notify the governor that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.0135. POLICIES ON PUBLIC HEARINGS. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985.

Sec. 34.014. OFFICERS OF BOARD. (a) The commissioner is the chairman of the board.

(b) Each board shall select a secretary who shall be nominated by the commissioner and approved by a majority of the board.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.015. QUORUM. A majority of a board constitutes a quorum for the transaction of business.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.016. RECORDS OF BOARD. A board shall keep a complete record of all of its proceedings.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.017. SPECIAL MINERAL FUNDS. Special funds are created in the State Treasury to be known as the "(appropriate department, board, or agency) special mineral fund."

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.018. DEPOSIT OF RECEIPTS. Amounts received under the provisions of this chapter shall be deposited in the State Treasury to the credit of the appropriate special account, with the exception that all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from land held by the department for game and fish conservation, protection, and management purposes shall be deposited in the State Treasury to the

credit of the game, fish, and water safety account, and all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from park, recreation, and historic land shall be deposited in the State Treasury to the credit of the state parks account.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 679, Sec. 62, eff. Sept. 1, 1993.

Sec. 34.019. EXPENDITURES. (a) The expenses of executing the provisions of this chapter shall be paid by warrants drawn by the comptroller on the State Treasury against the income from the special funds accumulated from leases, rentals, royalties, and other payments.

(b) The amounts received under the provisions of this chapter and deposited to the credit of a special fund shall be used exclusively for the benefit of the appropriate department, board, or agency.

(c) No money may be spent from the special funds except by legislative appropriation and for the purposes and in the amount stated in the Act appropriating it.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.0192. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 27, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 7, eff. Sept. 1, 1989.

Sec. 34.020. FILING IN GENERAL LAND OFFICE. All surveys, files, records, abstracts of title, copies of sale and lease contracts, and all other records pertaining to sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 34.051. LAND SUBJECT TO LEASE. Land owned by or held in trust for the use and benefit of either agency may be leased by the appropriate board to any person under the provisions of this chapter for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling, and disposing of the oil, gas, or other minerals.

Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 28, eff. Sept. 1, 1985.

Sec. 34.052. SUBDIVISION OF LAND. A board may have the land subject to its control surveyed or subdivided into tracts, lots, or blocks which will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of oil, gas, or mineral leases.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.053. MAPS AND PLATS. A board may make maps and plats it considers necessary to carry out the purposes of this chapter.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.054. ABSTRACTS OF TITLE. A board may obtain authentic abstracts of title to the land subject to its control that it considers necessary and may take the necessary steps to perfect a marketable title to the land.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.055. GEOLOGICAL SURVEYS AND INVESTIGATIONS. A board may issue a permit for geological, geophysical, and other surveys and investigations on land subject to lease by the board that is not under valid and existing leases and that will encourage the development of the land for oil, gas, or other minerals. A permit may be issued for a consideration and under terms and conditions which the board considers to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.056. PLACING LEASE ON MARKET. If a board determines there is a demand for the purchase of oil, gas, or mineral leases on a lot or tract of land subject to the control of the board which will reasonably insure an advantageous sale, the board shall place the oil, gas, or mineral leases on the market in the tract or tracts which the board may designate.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 34.057. LEASE PROVISIONS. (a) Leases shall be advertised and sold in the same manner and shall contain the same terms and conditions as leases issued by the School Land Board under Chapter 32 of this code.

(b) A board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

(c) The special sales fee provided for in Section 32.110 of this code shall be collected on leases issued under this chapter.

(d) The provisions of Chapter 32 of this code relating to payment of royalty, penalties and interest on delinquent payments, assignments, releases, and forfeiture shall apply to leases issued under this chapter.

Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 29, eff. Sept. 1, 1985.

Sec. 34.064. EASEMENTS. (a) A board may grant easements of rights-of-way on the land covered by the provisions of this chapter.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) The provisions of this section:

(1) do not apply to land owned by the Parks and Wildlife Department on which an easement may be granted under Section 11.301, Parks and Wildlife Code;

(2) do not apply to land owned by the state as a part of the penitentiary system; and

(3) do not repeal Section 496.004, Government Code.

Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 30, eff. Sept. 1, 1985.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 502 (H.B. 1449), Sec. 2, eff. June 17, 2011.

Sec. 34.065. RULES. A board may adopt rules and collect fees necessary for the implementation of this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 31, eff. Sept. 1, 1985.

CHAPTER 40. OIL SPILL PREVENTION AND RESPONSE ACT OF 1991

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 40.001. SHORT TITLE. This chapter may be cited as the Oil Spill Prevention and Response Act of 1991.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.002. POLICY. (a) The legislature finds and declares that the preservation of the Texas coast is a matter of the highest urgency and priority. It is the policy of this state to keep its coastal waters, rivers, lakes, estuaries, marshes, tidal flats, beaches, and public lands as pristine as possible, taking into account multiple use accommodations necessary to provide the broadest possible promotion of public and private interests. Spills,

discharges, and escapes of crude oil, petroleum, and other such substances resulting from their handling, storage, and transportation, particularly by vessel, endanger the coastal environment of the state, public and private property on the coast, and the well-being of those deriving their livelihood from marine-related activity in coastal waters. The hazards posed by the handling, storage, and transportation of these substances in the coastal waters are contrary to the paramount interests of the state. These state interests outweigh the economic burdens imposed under this chapter.

(b) The legislature finds and declares that the natural resources of the state and particularly those in the coastal waters of the state offer significant benefits to the citizens of Texas. These natural resources are important for their existence and their recreational, aesthetic, and commercial value. It is the policy of the state to protect these natural resources and to restore, rehabilitate, replace, and/or acquire the equivalent of these natural resources with all deliberate speed when they have been damaged. The legislature finds and declares that it is difficult to assess the value of these natural resources and to quantify injury to natural resources at a reasonable cost. The procedures and protocols utilized by the trustees must therefore consider the unique characteristics of each spill incident and the location of the natural resources affected. It is the intent of the legislature that natural resource damage assessment methodologies be developed for the purpose of reasonably valuing the natural resources of the State of Texas in the event of an oil spill and that the state recover monetary damages or have actions commenced by the spiller as early as possible to expedite the restoration, rehabilitation, and/or replacement of injured natural resources.

(c) The legislature intends by this chapter to exercise the police power of the state to protect its coastal waters and adjacent shorelines by conferring upon the Commissioner of the General Land Office the power to:

(1) prevent spills and discharges of oil by requiring and monitoring preventive measures and response planning;

(2) provide for prompt response to abate and contain spills and discharges of oil and ensure the removal and cleanup of pollution from such spills and discharges; and

(3) administer a fund to provide for funding these

activities and to guarantee the prompt payment of certain reasonable claims resulting from spills and discharges of oil.

(d) The legislature declares that it is the intent of this chapter to support and complement the Oil Pollution Act of 1990 (Pub. L. 101-380) and other federal law, specifically those provisions relating to the national contingency plan for cleanup of oil and hazardous substance spills and discharges, including provisions relating to the responsibilities of state agencies designated as natural resources trustees. The legislature intends this chapter to be interpreted and implemented in a manner consistent with federal law.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 11.265, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 1, eff. Sept. 1, 2003.

Sec. 40.003. DEFINITIONS. In this chapter:

(1) "Barrel" means 42 United States gallons at 60 degrees Fahrenheit.

(2) "Coastal waters" means the waters and bed of the Gulf of Mexico within the jurisdiction of the State of Texas, including the arms of the Gulf of Mexico subject to tidal influence, and any other waters contiguous thereto that are navigable by vessels with a capacity to carry 10,000 gallons or more of oil as fuel or cargo.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Comprehensive assessment method" means a method including sampling, modeling, and other appropriate scientific procedures to make a reasonable and rational determination of injury to natural resources resulting from an unauthorized discharge of oil.

(5) "Comptroller" means the comptroller of public accounts.

(6) "Crude oil" means any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate.

(7)(A) "Damages" means compensation:

(i) to an owner, lessee, or trustee for any direct, documented loss of, injury to, or loss of use of any real or personal property or natural resources injured by an unauthorized discharge of

oil;

(ii) to a state or local government for any direct, documented net loss of taxes or net costs of increased entitlements or public services; or

(iii) to persons, including but not limited to holders of an oyster lease or permit; persons owning, operating, or employed on commercial fishing, oystering, crabbing, or shrimping vessels; persons owning, operating, or employed by seafood processing concerns; and others similarly economically reliant on the use or acquisition of natural resources for any direct, documented loss of income, profits, or earning capacity from the inability of the claimant to use or acquire natural resources arising solely from injury to the natural resources from an unauthorized discharge of oil.

(B) With respect to natural resources, "damages" includes the cost to assess, restore, rehabilitate, or replace injured natural resources, or to mitigate further injury, and their diminution in value after such restoration, rehabilitation, replacement, or mitigation.

(8) "Discharge of oil" means an intentional or unintentional act or omission by which harmful quantities of oil are spilled, leaked, pumped, poured, emitted, or dumped into or on coastal waters or at a place adjacent to coastal waters where, unless controlled or removed, an imminent threat of pollution to coastal waters exists.

(9) "Discharge cleanup organization" means any group or cooperative, incorporated or unincorporated, of owners or operators of vessels or terminal facilities and any other persons who may elect to join, organized for the purpose of abating, containing, removing, or cleaning up pollution from discharges of oil or rescuing and rehabilitating wildlife or other natural resources through cooperative efforts and shared equipment, personnel, or facilities. Any third-party cleanup contractor, industry cooperative, volunteer organization, or local government shall be recognized as a discharge cleanup organization, provided the commissioner or the United States properly certifies or classifies the organization.

(10) "Federal fund" means the federal Oil Spill Liability Trust Fund.

(11) "Fund" means the coastal protection fund.

(12) "Harmful quantity" means that quantity of oil the

discharge of which is determined by the commissioner to be harmful to the environment or public health or welfare or may reasonably be anticipated to present an imminent and substantial danger to the public health or welfare.

(13) "Hazardous substance" means any substance, except oil, designated as hazardous by the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and designated by the Texas Commission on Environmental Quality.

(14) "Marine terminal" means any terminal facility used for transferring crude oil to or from vessels.

(15) "National contingency plan" means the plan prepared and published, as revised from time to time, under the Federal Water Pollution Control Act (33 U.S.C. Sec. 1321 et seq.) and the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.).

(16) "Natural resources" means all land, fish, shellfish, fowl, wildlife, biota, vegetation, air, water, and other similar resources owned, managed, held in trust, regulated, or otherwise controlled by the state.

(16-a) "No intrinsic value" means that the cost of removal and disposal of a vessel or structure that has been abandoned or left in or on coastal waters exceeds the salvage value of the vessel or structure.

(16-b) "Numbered vessel" means a vessel:

(A) for which a certificate of number has been awarded by this state as required by Chapter 31, Parks and Wildlife Code; or

(B) covered by a number in full force and effect awarded under federal law or a federally approved numbering system of another state.

(17) "Oil" means oil of any kind or in any form, including but not limited to crude oil, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under Subparagraphs (A) through (F) of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) and which is subject to the provisions of that Act, and which is so designated by the Texas Commission on Environmental Quality.

(18) "Owner" or "operator" means:

(A) any person owning, operating, or chartering by demise a vessel; or

(B) any person owning a terminal facility or a person operating a terminal facility by lease, contract, or other form of agreement.

(19) "Person in charge" means the person on the scene who is directly responsible for a terminal facility or vessel when a discharge of oil occurs or a particular duty arises under this chapter.

(20) "Person responsible" or "responsible person" means:

(A) the owner or operator of a vessel or terminal facility from which an unauthorized discharge of oil emanates or threatens to emanate;

(B) in the case of an abandoned vessel or terminal facility, the person who would have been the responsible person immediately prior to the abandonment; and

(C) any other person who causes, allows, or permits an unauthorized discharge of oil or threatened unauthorized discharge of oil.

(21) "Pollution" means the presence of harmful quantities of oil from an unauthorized discharge in coastal waters or in or on adjacent waters, shorelines, estuaries, tidal flats, beaches, or marshes.

(22) "Response costs" means:

(A) with respect to an actual or threatened discharge of oil, all costs incurred in an attempt to prevent, abate, contain, and remove pollution from the discharge, including costs of removing vessels or structures under this chapter, and costs of any reasonable measures to prevent or limit damage to the public health, safety, or welfare, public or private property, or natural resources; or

(B) with respect to an actual or threatened discharge of a hazardous substance, only costs incurred to supplement the response operations of the Texas Commission on Environmental Quality.

(23) "Terminal facility" or "facility" means any waterfront or offshore pipeline, structure, equipment, or device used for the purposes of drilling for, pumping, storing, handling, or transferring oil and operating where a discharge of oil from the facility could threaten coastal waters, including but not limited to any such facility owned or operated by a public utility or a governmental or

quasi-governmental body, but does not include any temporary storage facilities used only in connection with the containment and cleanup of unauthorized discharges of oil.

(24) "Trained personnel" means one or more persons who have satisfactorily completed an appropriate course of instruction developed under Section 40.302 of this code or all other training requirements as determined by the commissioner.

(25) "Trustee" means a natural resources trustee of the state as designated by the governor under federal law.

(26) "Unauthorized discharge of oil" means any discharge of oil, or any discharge of oil emanating from a vessel into waters adjoining and accessible from coastal waters, that is not authorized by a federal or state permit.

(27) "Unauthorized discharge of hazardous substances" means a spill or discharge subject to Subchapter G, Chapter 26, Water Code.

(28) "Vessel" includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, whether self-propelled or otherwise, including barges.

(29) Repealed by Acts 1995, 74th Leg., ch. 76, art. 11, Sec. 11.334(a), eff. Sept. 1, 1995.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.054, eff. Aug. 12, 1991; Acts 1993, 73rd Leg., ch. 776, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Secs. 11.266, 11.334(a), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 2, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 1, eff. September 1, 2009.

Sec. 40.004. ADMINISTRATION OF OIL SPILL RESPONSE AND CLEANUP. (a) The General Land Office, under the direction and control of the commissioner, is the state's lead agency for response to actual or threatened unauthorized discharges of oil and for cleanup of pollution from unauthorized discharges of oil. The commissioner shall administer this chapter and direct all state discharge response and cleanup operations resulting from unauthorized discharges of oil.

(b) All persons and all other officers, agencies, and subdivisions of the state shall carry out response and cleanup operations related to unauthorized discharges of oil subject to the authority granted to the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.005. ADMINISTRATION OF HAZARDOUS SUBSTANCE SPILL RESPONSE AND CLEANUP. The General Land Office, under the direction and control of the commissioner, is the state's lead agency for initiating response to all actual or threatened unauthorized discharges of oil. In the event of an unauthorized discharge of a hazardous substance, nothing in this chapter shall preclude the Texas Commission on Environmental Quality from at the earliest time practicable assuming response and cleanup duties pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 3, eff. Sept. 1, 2003.

Sec. 40.007. GENERAL POWERS AND DUTIES. (a) The commissioner may promulgate rules necessary and convenient to the administration of this chapter.

(b) The commissioner shall by rule establish procedures under Chapter 2001, Government Code for all hearings required by this chapter. The commissioner may administer oaths, receive evidence, issue subpoenas to compel attendance of witnesses and production of evidence related to hearings, and make findings of fact and decisions with respect to administering this chapter.

(c) The commissioner may contract with any public agency or private person or other entity, including entering into cooperative agreements with the federal government, acquire and dispose of real or personal property, delegate responsibility for implementing the requirements of this chapter, and perform any other act within or without the boundaries of this state necessary to administer this chapter.

(d) If the commissioner finds it necessary to enter property to

conduct a vessel or terminal facility audit, inspection, or drill authorized under this chapter or to respond to an actual or threatened unauthorized discharge of oil, the commissioner may enter the property after making a reasonable effort to obtain consent to enter the property.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.008. RAILROAD COMMISSION AUTHORITY. The Railroad Commission of Texas shall continue to exercise its authority pursuant to Section 91.101 of this code and Section 26.131, Water Code, to issue and enforce rules, permits, and orders to prevent pollution of surface and subsurface waters in the state by activities associated with the exploration, development, or production of oil, gas, or geothermal resources, including the transportation of oil or gas by pipeline. Nothing in this chapter preempts the jurisdiction of the Railroad Commission of Texas under Subchapter E, Chapter 121, Utilities Code, and Chapter 117, Natural Resources Code, over pipeline transportation of gas and hazardous liquids and over gas and hazardous liquid pipeline facilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.39, eff. Sept. 1, 1999.

SUBCHAPTER B. DISCHARGE RESPONSE

Sec. 40.051. NOTIFICATION. On notification of an actual or threatened unauthorized discharge of oil, the commissioner shall act to assess the discharge and prevent, abate, or contain any pollution from the discharge.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.052. HAZARDOUS SUBSTANCES DISCHARGES. If the unauthorized discharge involves predominantly a hazardous substance, the Texas Commission on Environmental Quality shall carry out

responsibility for abatement, containment, removal, and cleanup of the hazardous substances discharged, pursuant to Subchapter G, Chapter 26, Water Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.267, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 4, eff. Sept. 1, 2003.

SUBCHAPTER C. OIL SPILL PREVENTION AND RESPONSE

Sec. 40.101. NOTIFICATION AND RESPONSE. (a) Any person responsible for an unauthorized discharge of oil or the person in charge of any vessel or a terminal facility from or at which an unauthorized discharge of oil has occurred, as soon as that person has knowledge of the discharge, shall:

(1) immediately notify the commissioner of the discharge; and

(2) undertake all reasonable actions to abate, contain, and remove pollution from the discharge.

(b) If the persons responsible or in charge are unknown or appear to the commissioner to be unwilling or unable to abate, contain, and remove pollution from an unauthorized discharge of oil in an adequate manner, the commissioner may abate, contain, and remove pollution from the discharge and may contract with and appoint agents who shall operate under the direction of the commissioner.

(c) In order to prevent duplication of effort among state agencies, the commissioner shall utilize the expertise of the Texas Commission on Environmental Quality on technical and scientific actions, including but not limited to:

(1) taking samples in the spill area;

(2) monitoring meteorological conditions that may affect spill response operations; and

(3) regulating disposal of spilled material.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.269, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 5, eff. Sept. 1, 2003.

Sec. 40.102. RESPONSE COORDINATION. (a) In responding to actual or threatened unauthorized discharges of oil, the commissioner

may appoint a state-designated on-scene coordinator to act in the commissioner's place.

(b) If the unauthorized discharge of oil is subject to the national contingency plan, in responding to the discharge the commissioner or the state-designated on-scene coordinator shall to the greatest extent practicable act in accordance with the national contingency plan and cooperate with the federal on-scene coordinator or other federal agency or official exercising authority under the national contingency plan.

(c) The commissioner or the state-designated on-scene coordinator may act independently to the extent no federal on-scene coordinator or authorized agency or official of the federal government has assumed federal authority to oversee, coordinate, and direct response operations.

(d) The state or federal on-scene coordinator may authorize the decanting of recovered water during containment, cleanup, and response activities resulting from an unauthorized discharge of oil.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 4, eff. Sept. 1, 1993.

Sec. 40.103. ASSISTANCE AND COMPENSATION. (a) Subject to the commissioner's authority under this chapter, any person or discharge cleanup organization may assist in abating, containing, or removing pollution from any unauthorized discharge of oil. This chapter does not affect any rights not inconsistent with this chapter that any such person or organization may have against any third party whose acts or omissions caused or contributed to the unauthorized discharge.

(b) Any person or discharge cleanup organization that renders assistance in abating, containing, or removing pollution from any unauthorized discharge of oil may receive compensation from the fund for response costs, provided the commissioner approves compensation prior to the assistance being rendered. The commissioner, on petition and for good cause shown, may waive the prior approval prerequisite.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 6, eff. Sept. 1, 2003.

Sec. 40.104. QUALIFIED IMMUNITY FOR RESPONSE ACTIONS. (a) No action taken by any person or discharge cleanup organization to abate, contain, or remove pollution from an unauthorized discharge of oil, whether such action is taken voluntarily, or pursuant to the national contingency plan, or pursuant to a discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, shall be construed as an admission of responsibility or liability for the discharge.

(b) No person or discharge cleanup organization that voluntarily, or pursuant to the national contingency plan, or pursuant to any discharge response plan required under this chapter, or pursuant to the request of an authorized federal or state official, or pursuant to the request of the responsible person, renders assistance or advice in abating, containing, or removing pollution from an unauthorized discharge of oil is liable for response costs, damages, or civil penalties resulting from acts or omissions committed in rendering such assistance or advice, except for acts or omissions of gross negligence or wilful misconduct.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 7, eff. Sept. 1, 2003.

Sec. 40.105. EQUIPMENT AND PERSONNEL. The commissioner may establish and maintain equipment and trained personnel at places the commissioner determines may be necessary to facilitate response operations.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.106. REFUSAL TO COOPERATE. (a) If a responsible person, or a person or discharge cleanup organization under the control of a responsible person, participating in operations to abate, contain, and remove pollution from any unauthorized discharge of oil, reasonably believes that any directions or orders given by the commissioner or the commissioner's designee under this chapter will unreasonably endanger public safety or natural resources or conflict with directions or orders of the federal on-scene coordinator, the party may refuse to comply with the direction or

orders.

(b) The party shall state at the time of refusal the reason or reasons why the party refuses to comply. The party shall give the commissioner written notice of the reason or the reasons for the refusal within 48 hours of the refusal.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.107. NATURAL RESOURCES DAMAGES. (a) (1) In any action to recover natural resources damages, the amount of damages established by the commissioner in conjunction with the trustees shall create a rebuttable presumption of the amount of such damages.

(2) The commissioner shall represent the consensus position of the trustees whenever a collective decision or agreement is required by this section.

(3) Whenever trustees cannot achieve a consensus, the commissioner may invoke mediation to settle any disputed matter related to this section. The mediation shall be immediately commenced and shall be concluded within 10 days of its commencement. The trustees shall abide by the consensus achieved through mediation.

(4) The trustees shall enter into a memorandum of agreement which describes the mediation process of Subdivision (3) of this subsection.

(b) The commissioner may establish the rebuttable presumption by submitting to the court a written report of the amounts computed or expended according to the state plan. The written report shall be admissible in evidence.

(c)(1) The commissioner, in conjunction with the trustees, shall develop an inventory that identifies and catalogs the physical locations, the seasonal variations in location, and the current condition of natural resources; provides for data collection related to coastal processes; and identifies the recreational and commercial use areas that are most likely to suffer injury from an unauthorized discharge of oil. The inventory shall be completed by September 1, 1995.

(2) The physical locations surveyed for the inventory of natural resources shall include, at a minimum, the following priority areas:

(A) the Galveston Bay system and the Houston Ship

Channel;

(B) the Corpus Christi Bay system;

(C) the lower Laguna Madre;

(D) Sabine Lake; and

(E) federal and state wildlife refuge areas.

(3) The current condition of selected natural resources inventoried and cataloged shall be determined by, at a minimum, a baseline sampling and analysis of current levels of constituent substances selected after considering the types of oil most frequently transported through and stored near coastal waters.

(4) The commissioner shall adopt administrative procedures and protocols for the assessment of natural resource damages from an unauthorized discharge of oil. As developed through negotiated rulemaking with the trustees and other interested parties, the procedures and protocols shall require the trustees to assess natural resource damages by considering the unique characteristics of the spill incident and the location of the natural resources affected. These procedures and protocols shall be adopted by rule, by the trustee agencies after negotiation, notice, and public comment, by June 1, 1994.

(5) The administrative procedures and protocols shall include provisions which address:

(A) notification by the commissioner to all trustees in the event of an unauthorized discharge of oil;

(B) coordination with and among trustees, spill response agencies, potentially responsible parties, experts in science and economics, and the public; and

(C) participation in all stages of the assessment process by the potentially responsible party, as consistent with trustee responsibilities.

(6) The administrative procedures and protocols shall also require the trustees to:

(A) assist the on-scene coordinator, during spill response activities and prior to the time that the state on-scene coordinator determines that the cleanup is complete, in predicting the impact of the oil and in devising the most effective methods of protection for the natural resources at risk;

(B) identify appropriate sampling and data collection techniques to efficiently determine the impact on natural resources of the unauthorized discharge of oil;

(C) initiate, within 24 hours after approval for access to the site by the on-scene coordinator, an actual field investigation which may include sampling and data collection; the protocols shall require that the responsible party and the trustees be given, on request, split samples and copies of each other's photographs utilized in assessing the impact of the unauthorized discharge of oil; and

(D) establish plans, including alternatives that are cost-effective and efficient, to satisfy the goal of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources.

(7)(A) The administrative procedures and protocols shall also include the following types of assessment procedures and deadlines for their completion:

(i) an expedited assessment procedure which may be used in situations in which the spill has limited observable mortality and restoration activities can be speedily initiated and/or in which the quantity of oil discharged does not exceed 1,000 gallons; the purpose of utilizing the expedited assessment procedure is to allow prompt initiation of restoration, rehabilitation, replacement, and/or acquisition of an equivalent natural resource without lengthy analysis of the impact on affected natural resources; this procedure shall, at a minimum, require that the trustees consider the following items:

(aa) the quantity and quality of oil discharged;

(bb) the time period during which coastal waters are affected by the oil and the physical extent of the impact;

(cc) the condition of the natural resources prior to the unauthorized discharge of oil; and

(dd) the actual costs of restoring, rehabilitating, and/or acquiring the equivalent of the injured natural resources;

(ii) a comprehensive assessment procedure for use in situations in which expedited or negotiated assessment procedures are not appropriate; and

(iii) any other assessment method agreed upon between the responsible person and the trustees, consistent with their public trust duties.

(B) The trustees shall determine, within 60 days of the

determination by the on-scene coordinator that the cleanup is complete, whether:

(i) action to restore, rehabilitate, or acquire an equivalent natural resource is required;

(ii) an expedited assessment which may include early commencement of restoration, rehabilitation, replacement, and/or acquisition activities, may be required; and

(iii) a comprehensive assessment is necessary.

(C) The trustees may petition the commissioner for a longer period of time to make the above determination by showing that the full impact of the discharge on the affected natural resources cannot be determined in 60 days.

(D) The trustees shall complete the comprehensive assessment procedure within 20 months of the date of the determination by the state on-scene coordinator that the cleanup is complete. The trustees may petition the commissioner for a longer period of time to complete the assessment by showing that the full impact of the discharge on the affected natural resources cannot be determined in 20 months.

(E) Any assessment generated by the trustees shall be reasonable and have a rational connection to the costs of conducting the assessment and of restoring, rehabilitating, replacing, and/or acquiring the equivalent of the injured natural resources. The trustees shall ensure that the cost of any restoration, rehabilitation, replacement, or acquisition project shall not be disproportionate to the value of the natural resource before the injury. The trustees shall utilize the most cost-effective method to achieve restoration, rehabilitation, replacement, or acquisition of an equivalent resource. Furthermore, the trustees shall take into account the quality of the actions undertaken by the responsible party in response to the spill incident, including but not limited to containment and removal actions and protection and preservation of natural resources.

(F) The potentially responsible party shall make full payment within 60 days of the completion of the assessment by the trustees or, if mediation pursuant to this paragraph is conducted, within 60 days of the conclusion of the mediation. To facilitate an expedited recovery of funds for natural resource restoration and to assist the trustees and the responsible party in the settlement of disputed natural resource damage assessments at their discretion and

at any time, all disputed natural resource damage assessments shall be referred to mediation as a prerequisite to the jurisdiction of any court. Results of the mediation and any settlement offers tendered during the mediation shall be treated as settlement negotiations for the purposes of admissibility in a court of law. Either the trustees or the potentially responsible person may initiate the mediation process, after an assessment has been issued, by giving written notice to the commissioner, who shall give written notice to all parties. One mediator shall be chosen by the trustees and one mediator shall be chosen by the responsible parties. Within 45 days of the receipt of the assessment from the trustees, the mediators shall be designated. The mediation shall end 135 days after the receipt of the assessment from the trustees.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 5, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 146, Secs. 8, 9, eff. Sept. 1, 2003.

Sec. 40.108. DERELICT VESSELS AND STRUCTURES. (a) A person may not, without the consent of the commissioner, leave, abandon, or maintain any structure or vessel in or on coastal waters, on public or private lands or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition and the commissioner finds the structure or vessel to be:

(1) involved in an actual or threatened unauthorized discharge of oil;

(2) a threat to public health, safety, or welfare;

(3) a threat to the environment; or

(4) a navigation hazard.

(b) The commissioner may remove and dispose of or contract for the removal and disposal of any vessel or structure described in Subsection (a) and may recover the costs of removal, storage, and disposal from the owner or operator of the vessel or structure. Except as provided by Subsection (d-1), the recovered costs shall be deposited to the credit of the coastal protection fund established by Section 40.151.

(c) The commissioner must comply with the requirements of Section 40.254 before removing or disposing of a vessel or structure

described in Subsection (a), except that the commissioner may remove a vessel or structure without first providing notice and an opportunity for a hearing if the owner or operator of the vessel or structure, or a person acting on behalf of the owner or operator, is not taking reasonable steps to abate the discharge, threat, or hazard described by Subsection (a) and the vessel or structure:

(1) is involved in an actual or threatened unauthorized discharge of oil;

(2) creates an imminent and significant threat to life or property; or

(3) creates a significant navigation hazard.

(d) The commissioner may dispose of the vessel or structure in any reasonable and environmentally sound manner. The commissioner shall give preference to disposal options that generate a monetary benefit from the vessel or structure. If no value may be generated from the vessel or structure, the commissioner shall select the least costly method. Except as provided by Subsection (d-1), proceeds from the sale of the vessel or structure shall be used for removal, storage, and disposal costs, and any proceeds in excess of the cost of removal, storage, and disposal shall be deposited to the credit of the coastal protection fund.

(d-1) If the commissioner has actual notice that a person holds a security interest in a vessel or structure subject to removal or disposal under this section, notice must be given to the person in the manner provided by Section 40.254. If the vessel or structure is not removed within a reasonable time as specified in the preliminary report under Section 40.254, the commissioner may remove and dispose of, or contract for the removal and disposal of, any vessel or structure described by Subsection (a). The interest of the state in recovering removal, storage, and disposal costs shall have priority over the interest of the holder of a security interest in a vessel or structure described by Subsection (a). Proceeds from the sale of the vessel or structure in excess of the cost of removal, storage, and disposal shall be paid to the holder of the security interest in the vessel or structure in an amount not to exceed the amount necessary to satisfy the secured debt.

(d-2) For purposes of this section, the term "structure" includes a vehicle as defined by Section 502.001, Transportation Code, if the vehicle is:

(1) located in coastal waters; and

(2) in a wrecked, derelict, or substantially dismantled condition.

(d-3) The commissioner shall make information on abandoned vessels and structures accessible on the General Land Office's Internet website and in any other medium, as determined by the commissioner, to the public and to a person receiving notice as required by Section 40.254.

(e) The commissioner by rule may establish a system for prioritizing the removal or disposal of vessels or structures under this section.

(f) This section does not impose a duty on the state to remove or dispose of a vessel or structure or to warn of a hazardous condition on state land.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 2, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 1, eff. September 1, 2017.

Sec. 40.109. REGISTRATION OF TERMINAL FACILITIES. (a) A person may not operate or cause to be operated a terminal facility without a discharge prevention and response certificate issued pursuant to rules promulgated under this chapter.

(b)(1) As a condition precedent to the issuance or renewal of a certificate, the commissioner shall require satisfactory evidence that:

(A) the applicant has implemented a discharge prevention and response plan consistent with state and federal plans and regulations for prevention of unauthorized discharges of oil and abatement, containment, and removal of pollution when such discharge occurs; and

(B) the applicant can provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution from an unauthorized discharge of oil as

provided in the plan.

(2) A terminal facility response plan that complies with requirements under federal law and regulations for a terminal facility response plan satisfies the requirements of Subdivision (1)(A) of this subsection.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.110. GENERAL TERMS. (a) Discharge prevention and response certificates are valid for a period of five years. The commissioner by rule shall require each registrant to report annually on the status of its discharge prevention and response plan and response capability.

(b) The commissioner may review a certificate at any time there is a material change affecting the terminal facility's discharge prevention and response plan or response capability.

(c) Certificates shall be issued subject to such terms and conditions as the commissioner may determine are reasonably necessary to carry out the purposes of this chapter.

(d) Certificates issued to any terminal facility shall take into account the vessels used to transport oil to or from the facility.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1014 (H.B. 1481), Sec. 2, eff. September 1, 2017.

Sec. 40.111. INFORMATION. Each applicant for a discharge prevention and response certificate shall submit information, in a form satisfactory to the commissioner, describing the following:

(1) the barrel or other measurement capacity of the terminal facility;

(2) the dimensions and barrel capacity of the largest vessel docking at or providing service from the terminal facility;

(3) the storage and transfer capacities and average daily throughput of the terminal facility;

(4) the types of oil stored, handled, or transferred at the terminal facility;

(5) information related to implementation of the applicant's discharge prevention and response plan, including:

(A) all response equipment such as vehicles, vessels, pumps, skimmers, booms, bioremediation supplies and application devices, dispersants, chemicals, and communication devices to which the terminal facility has access, as well as the estimated time required to deploy the equipment after an unauthorized discharge of oil;

(B) the trained personnel that are required and available to deploy and operate the response equipment, as well as the estimated time required to deploy the personnel after an unauthorized discharge of oil;

(C) the measures employed to prevent unauthorized discharges of oil; and

(D) the terms of agreement and operation plan of any discharge cleanup organization to which the owner or operator of the terminal facility belongs;

(6) the source, nature of, and conditions of financial responsibility for response costs and damages; and

(7) any other information necessary or appropriate to the review of a registrant's discharge prevention and response capabilities.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.112. ISSUANCE. On compliance with Sections 40.109 through 40.111, the commissioner shall issue the applicant a discharge prevention and response certificate covering the terminal facility.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 1014 (H.B. 1481), Sec. 1, eff. September 1, 2017.

Sec. 40.113. SUSPENSION. If the commissioner determines that a registrant does not have a discharge prevention and response plan or

that the registrant's preventive measures or containment and cleanup capabilities are inadequate, the commissioner may, after notice and hearing as provided in Section 40.254 of this code, suspend the registrant's certificate until such time as the registrant complies with the requirements of this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.114. CONTINGENCY PLANS FOR VESSELS. (a) Any vessel with a capacity to carry 10,000 gallons or more of oil as fuel or cargo that operates in coastal waters or waters adjoining and accessible from coastal waters shall maintain a written vessel-specific discharge prevention and response plan that satisfies the requirements of rules promulgated under this chapter. This section shall not apply to any dedicated response vessel or to any other vessel for activities within state waters related solely to the containment and cleanup of oil, including response-related training or drills.

(b) The plan must:

(1) provide for response actions including notification to the commissioner, verification of the unauthorized discharge, identification of the pollutant, assessment of the discharge, vessel stabilization, and discharge abatement and mitigation;

(2) designate an on-board spill officer who satisfies the definition of trained personnel as provided by Section 40.003 of this code and who shall train the vessel's crew to conduct unauthorized discharge response operations according to the plan and shall coordinate on-board response operations in the event of an unauthorized discharge; and

(3) contain any other provision the commissioner reasonably requires by rule.

(c) A discharge prevention and response plan that complies with requirements under federal laws and regulations for a vessel-specific plan satisfies the requirements of Subsections (a) and (b) of this section.

(d) The owner or operator of a vessel subject to this section must be able to provide, directly or through membership or contract with a discharge cleanup organization, all required equipment and trained personnel to prevent, abate, contain, and remove pollution

from an unauthorized discharge of oil as provided in the plan.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 6, eff. Sept. 1, 1993.

Sec. 40.116. AUDITS, INSPECTIONS, AND DRILLS. The commissioner may subject a vessel subject to Section 40.114 of this code or a terminal facility to an announced or unannounced audit, inspection, or drill to determine the discharge prevention and response capabilities of the terminal facility or vessels. Any vessel drill conducted by the commissioner shall be in cooperation and conjunction with the United States Coast Guard, and the commissioner's participation may not interfere with the schedule of the vessel.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 10, eff. Sept. 1, 2003.

Sec. 40.117. REGULATIONS. (a) The commissioner shall from time to time adopt, amend, repeal, and enforce reasonable regulations, including but not limited to those relating to the following matters regarding the unauthorized discharge of oil:

(1) standards and requirements for discharge prevention and response capabilities of terminal facilities and vessels;

(2) standards, procedures, and methods of designating persons in charge and reporting unauthorized discharges and violations of this chapter;

(3) standards, procedures, methods, means, and equipment to be used in the abatement, containment, and removal of pollution;

(4) development and implementation of criteria and plans of response to unauthorized discharges of various degrees and kinds, including realistic worst-case scenarios;

(5) requirements for complete and thorough inspections of vessels subject to Section 40.114 of this code and of terminal facilities;

(6) certification of discharge cleanup organizations;

(7) requirements for the safety and operation of vessels, motor vehicles, motorized equipment, and other equipment involved in the transfer of oil at terminal facilities and the approach and

departure from terminal facilities;

(8) requirements that required containment equipment be on hand, maintained, and deployed by trained personnel;

(9) requirements for certification as trained personnel;

(10) standards for reporting material changes in discharge prevention and response plans and response capability for purposes of terminal facility certificate reviews; and

(11) such other rules and regulations consistent with this chapter and appropriate or necessary to carry out the intent of this chapter.

(b) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

SUBCHAPTER D. PAYMENT OF COSTS AND DAMAGES

Sec. 40.151. COASTAL PROTECTION FUND. (a) The purpose of this subchapter is to provide immediately available funds for response to all unauthorized discharges, for cleanup of pollution from unauthorized discharges of oil, for payment of damages from unauthorized discharges of oil, and for erosion response projects.

(b) The coastal protection fund is established in the state treasury to be used by the commissioner as a nonlapsing revolving fund only for carrying out the purposes of this chapter and of Subchapter H, Chapter 33. To this fund shall be credited all fees, penalties, judgments, reimbursements, proceeds from the sale of a vessel or structure removed under Section 40.108, money forfeited under Section 77.119(e), Parks and Wildlife Code, interest or income on the fund, and charges provided for in this chapter and the fee revenues levied, collected, and credited pursuant to this chapter. The fund shall not exceed $50 million.

(c) The commissioner may accept grants, gifts, and donations of property, including real property, on behalf of the fund. The commissioner may sell real or personal property accepted on behalf of the fund and shall deposit the proceeds of the sale in the fund.

(d) Any interest in real or personal property acquired by donation, gift, or grant or by using money in the fund shall be held

by the commissioner.

(e) Repealed by Acts 2003, 78th Leg., ch. 146, Sec. 16, eff. Sept. 1, 2003.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 1.055, eff. Aug. 12, 1991; Acts 1995, 74th Leg., ch. 1058, Sec. 14(a), eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 508, Sec. 6, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Secs. 11, 16, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 2, eff. September 1, 2005.

Sec. 40.152. USE OF FUND. (a) Money in the fund may be disbursed for the following purposes and no others:

(1) administrative expenses, personnel and training expenses, and equipment maintenance and operating costs related to implementation and enforcement of this chapter;

(2) response costs related to abatement and containment of actual or threatened unauthorized discharges of oil incidental to unauthorized discharges of hazardous substances;

(3) response costs and damages related to actual or threatened unauthorized discharges of oil;

(4) assessment, restoration, rehabilitation, or replacement of or mitigation of damage to natural resources damaged by an unauthorized discharge of oil;

(5) in an amount not to exceed $50,000 annually, the small spill education program;

(6) in an amount not to exceed $1,250,000 annually, interagency contracts under Section 40.302;

(7) the purchase of response equipment under Section 40.105 within two years of the effective date of this chapter, in an amount not to exceed $4 million; thereafter, for the purchase of equipment to replace equipment that is worn or obsolete;

(8) other costs and damages authorized by this chapter;

(9) in an amount not to exceed the interest accruing to the fund annually, erosion response projects under Subchapter H, Chapter 33; and

(10) in conjunction with the Railroad Commission of Texas,

costs related to the plugging of abandoned or orphaned oil wells located on state-owned submerged lands.

(b) There is hereby appropriated from the fund to the General Land Office, subject to this section, the amounts specified for the purposes of Subdivisions (5) and (6) of Subsection (a) of this section, $2.5 million for administrative costs under this chapter for the two-year period beginning with the effective date of this chapter, and the actual amounts necessary to pay response costs and damages as provided in this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 7, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 508, Sec. 7, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 146, Sec. 12, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 15.01, eff. August 29, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1268 (H.B. 3385), Sec. 1, eff. June 15, 2007.

Sec. 40.153. REIMBURSEMENT OF FUND. The commissioner shall recover to the use of the fund, either from persons responsible for the unauthorized discharge or otherwise liable or from the federal fund, jointly and severally, all sums owed to or expended from the fund. This section does not apply to sums expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1999, 76th Leg., ch. 508, Sec. 8, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.006(a), eff. September 1, 2005.

Sec. 40.154. COASTAL PROTECTION FEE; ADMINISTRATIVE COSTS. (a) There is hereby imposed a fee on every person owning crude oil in a vessel at the time such crude oil is transferred to or from a marine terminal. This fee is in addition to all taxes or other fees levied on crude oil.

(b) The operator of the marine terminal shall collect the fee

from the owner of the crude oil and remit the fee to the comptroller unless the owner of the crude oil is registered with the comptroller for remittance of the fee. The fee shall be imposed only once on the same crude oil. The fee shall be paid monthly by the last day of the month following the calendar month in which liability for the fee is incurred.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.155. DETERMINATION OF FEE. (a) Except as otherwise provided in this section, the rate of the fee shall be 1-1/3 cents per barrel of crude oil until the commissioner certifies that the unencumbered balance in the fund has reached $20 million. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds $20 million. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller that the unencumbered balance in the fund exceeds $20 million.

(b) If the unencumbered balance in the fund falls below $10 million, the commissioner shall certify such fact to the comptroller. On receiving the commissioner's certification, the comptroller shall resume collecting the fee until suspended in the manner provided in Subsection (a) of this section.

(c) Notwithstanding the provisions of Subsection (a) or (b) of this section, the fee shall be levied at the rate of four cents per barrel if the commissioner certifies to the comptroller a written finding of the following facts:

(1) the unencumbered balance in the fund is less than $20 million;

(2) an unauthorized discharge of oil in excess of 100,000 gallons has occurred within the previous 30 days; and

(3) expenditures from the fund for response costs and damages are expected to deplete the fund substantially.

(d) In the event of a certification to the comptroller under Subsection (c) of this section, the comptroller shall collect the fee at the rate of four cents per barrel until the unencumbered balance in the fund reaches $20 million or any lesser amount that the commissioner determines is necessary to pay response costs and

damages without substantially depleting the fund. The commissioner shall certify to the comptroller the date on which the unencumbered balance in the fund exceeds $20 million or such other lesser amount. The fee shall not be collected or required to be paid on or after the first day of the second month following the commissioner's certification to the comptroller.

(e) For purposes of this section, the unencumbered balance of the fund shall be determined by the unencumbered cash balance of the fund at the end of each month or on the date of a finding under Subsection (c) of this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1995, 74th Leg., ch. 1058, Sec. 15, eff. Aug. 30, 1995.
Amended by:

Acts 2005, 79th Leg., Ch. 899 (S.B. 1863), Sec. 15.02, eff. August 29, 2005.

Sec. 40.156. ADMINISTRATION OF FEE. (a) The comptroller shall administer the provisions of this section as provided in Chapters 101 through 113 of the Tax Code.

(b) In the event the commissioner makes a finding under Section 40.155(c) of this code, the commissioner shall publish the finding in the Texas Register. In the event of any suspension or other reinstatement of the fee, the comptroller shall publish the suspension or reinstatement in the Texas Register at least 30 days prior to the scheduled effective date of the suspension or reinstatement.

(c) In the event of an emergency, the comptroller shall reinstate the fee in accordance with rules promulgated for that purpose.

(d) The fee levied under this section shall be due and collected beginning 60 days after the effective date of this chapter. Contingent upon receipt by the comptroller of such fees, the commissioner may temporarily use general revenue funds, in an amount not to exceed estimated revenues to the coastal protection fund in the fiscal year in which revenues are collected. The general revenue amounts used shall be repaid out of the first fees collected under this chapter, and may be used only for purposes of meeting temporary

cash flow needs during the fiscal year. The transfer and repayment of these funds shall be completed by the end of each fiscal year under procedures and standards established by the comptroller.

(e) If refunds are determined to be due, they shall be paid only from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.157. LIABILITY OF THE FUND. (a) Persons who incur response costs or who are entitled to damages as a result of an unauthorized discharge of oil may receive compensation from the fund.

(b) Any person other than the state seeking compensation from the fund must file a claim with the commissioner. The claimant must provide the commissioner with satisfactory proof of the costs incurred or damages claimed. Each claimant shall make a sworn verification of the claim.

(c) The commissioner shall prescribe appropriate forms and requirements and by rule shall establish procedures for filing claims for compensation from the fund and for response cost reimbursements to other state agencies from the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.158. EXCEPTIONS TO LIABILITY. (a) Except as provided by Subsection (b) of this section, the fund is absolutely liable for:

(1) all proven, reasonable response costs approved by the commissioner under Section 40.103 of this code from an unauthorized discharge of oil;

(2) all natural resources damages from an unauthorized discharge of oil; and

(3) with the exception of those damages proportionately attributable to the negligence or wilful misconduct of the claimant, all other proven damages from the fund from an unauthorized discharge of oil.

(b) A person liable for an unauthorized discharge of a hazardous substance may not file a claim or be reimbursed from the fund for the unauthorized discharge of a hazardous substance. A person responsible for an unauthorized discharge of oil may not file a claim or be reimbursed from the fund except:

(1) if the person responsible is entitled to a defense to liability under Section 40.204 of this code, a claim for response costs and damages may be filed; or

(2) if the person responsible is entitled to a limitation of liability under Section 40.202 of this code, a claim for response costs and damages to the extent that they exceed the applicable limitation may be filed.

(c) No claim may be approved or certified during the pendency of any action by the claimant in court to recover response costs or damages that are the subject of the claim.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.159. CLAIMS FROM DISCHARGES OF OIL. (a) (1) On determining that damage from an unauthorized discharge of oil is likely to occur or has occurred and will result in the filing of claims, the commissioner shall immediately designate the person or persons responsible who, if the designation is not challenged within five days of notice thereof, shall immediately and widely advertise the manner in which the person will accept claims.

(2) If the designation is challenged or the commissioner is otherwise unable to designate a responsible person, the commissioner shall immediately and widely advertise the manner in which the commissioner shall accept claims.

(b)(1) A claimant shall submit any claim exceeding $50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 90 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant shall submit the claim to the federal fund. If there is no reasonable response from the federal fund within 60 days, the claimant may submit the claim to the fund.

(2) A claimant shall submit any claim less than or equal to $50,000 to the designated responsible person. If there is no reasonable response from the designated responsible person within 30 days or in the absence of a designated responsible person as provided under Subsection (a)(2) of this section, the claimant may submit the claim to the fund.

(c) Claims must be submitted to the fund by filing with the

commissioner not later than 180 days after the periods prescribed in Subsection (b) of this section. Claims not filed within the time allowed are barred as against the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.160. PAYMENT OF AWARDS. (a) The commissioner shall establish the amount of the award. If the claimant accepts the award, the commissioner shall certify the amount of the award and the name of the claimant to the comptroller, who shall pay the award from the fund, subject to Section 40.162 of this code.

(b) If either the claimant or the person or persons determined by the commissioner to be responsible for the unauthorized discharge of oil disagrees with the amount of the award, such person may request a hearing. The commissioner shall hold a hearing and issue an order setting the amount of the award.

(c) Each person's claims arising from a single discharge must be stated in one application. Costs or damages omitted from any claim at the time a claimant accepts an award are waived. The commissioner may make partial final awards toward a single claim.

(d) If a person accepts an award from the fund, it shall bind both the claimant and the commissioner as to all issues covered by the award and may not be further attacked, collaterally or by separate action. The commissioner shall be subrogated to all rights or causes of action of the claimant arising from the unauthorized discharge and covered by the award. The claimant shall have no further cause of action against the person responsible for the discharge.

(e) Claims proceedings under this chapter are not contested cases under Chapter 2001, Government Code and judicial review of such proceedings is not available under that Act.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.161. REIMBURSEMENT OF FUND. (a) The commissioner shall diligently pursue reimbursement to the fund of any sum expended or paid from the fund.

(b) In any action to recover such sums, the commissioner shall submit to the court a written report of the amounts paid from or owed by the fund. The amounts paid from or owed by the fund stated in the report shall create a rebuttable presumption of the amount of the fund's damages. The written report shall be admissible in evidence.

(c) This section does not apply to a sum expended under Section 40.152(a)(9).

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1999, 76th Leg., ch. 508, Sec. 9, eff. Sept. 1, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 14.006(b), eff. September 1, 2005.

Sec. 40.162. AWARDS EXCEEDING FUND. (a) If the total awards against the fund exceed the existing balance of the fund, the claimant or claimants shall be paid from the future income of the fund. Each claimant or claimants shall receive a pro rata share of all money available in the fund until the total amount of awards is paid.

(b) The commissioner by rule may make exceptions to Subsection (a) of this section in cases of hardship. Amounts collected by the fund from the prosecution of actions shall be used to satisfy the claims as to which such prosecutions relate to the extent unsatisfied.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER E. LIABILITY OF PERSONS RESPONSIBLE

Sec. 40.201. FINANCIAL RESPONSIBILITY. (a) Each owner or operator of a vessel subject to Section 40.114 of this code and operating within coastal waters or waters adjoining and accessible from coastal waters or any terminal facility subject to this code shall establish and maintain evidence of financial responsibility for costs and damages from unauthorized discharges of oil pursuant to federal law or in any other manner provided in this chapter.

(b) If a vessel subject to Section 40.114 of this code or a terminal facility is not required under federal law to establish and maintain evidence of financial responsibility, the owner or operator

of that vessel or terminal facility shall establish and maintain evidence in an amount and form prescribed by rules promulgated under this code.

(c) Any owner or operator of a vessel that is a member of any protection and indemnity mutual organization, which is a member of the international group, any other owner or operator that is an assured of the Water Quality Insurance Syndicate, or an insured of any other organization approved by the commissioner, and which is covered for oil pollution risks up to the amounts required by federal law is in compliance with the financial responsibility requirements of this chapter. The commissioner shall specifically designate the organizations and the terms under which owners and operators of vessels shall demonstrate financial responsibility.

(d) After an unauthorized discharge of oil, a vessel shall remain in the jurisdiction of the commissioner until the owner, operator, or person in charge has shown the commissioner evidence of financial responsibility. The commissioner may not detain the vessel longer than 12 hours after the vessel has proven financial responsibility.

(e) In addition to any other remedy or enforcement provision, the commissioner may suspend a registrant's discharge prevention and response certificate or may deny a vessel entry into any port in coastal waters for failure to comply with this section.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 8, eff. Sept. 1, 1993.

Sec. 40.202. RESPONSE COSTS AND DAMAGES LIABILITY. (a) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a vessel is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed $1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed $5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to $600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code; and

(2) in addition to response costs, all damages other than

natural resources damages from the actual or threatened discharge to an amount not to exceed $1 million for vessels of 300 gross tons or less that do not carry oil as cargo, to an amount not to exceed $5 million for vessels of 8,000 gross tons or less or, for vessels greater than 8,000 gross tons, to an amount equal to $600 per gross ton of such vessel, not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code.

(b) Subject to Subsection (c) of this section, any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility is liable for:

(1) all response costs from the actual or threatened discharge to an amount not to exceed $5 million, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all response costs from the actual or threatened discharge; and

(2) in addition to response costs, all damages other than natural resources damages from the actual or threatened discharge to an amount not to exceed the aggregate amount of the fund established under Section 40.151(b) of this code, except any person responsible for an actual or threatened unauthorized discharge of oil from an offshore drilling or production facility is liable for all such damages from the actual or threatened discharge.

(c)(1) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct, the person responsible for such gross negligence or wilful misconduct is liable for the full amount of all response costs and damages.

(2) "Wilful misconduct" under this chapter includes intentional violation of state, federal, or local safety, construction, or operating standards or requirements, including the requirements of this chapter.

(3) If an actual or threatened unauthorized discharge of oil is not eligible for expenditures from the federal fund, the person responsible is liable for the full amount of all response costs and damages incurred by the fund.

(4) If the responsible person unreasonably fails to cooperate with discharge response and cleanup operations as provided in Section 40.106 of this code, the responsible person is liable for the full amount of all response costs and damages.

(d) Liability limits established under this section are exclusive of interest or attorney fees to which the state is entitled

to recover under this code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.203. LIABILITY FOR NATURAL RESOURCES DAMAGES. (a) The commissioner, on behalf of the trustees, shall seek reimbursement from the federal fund for damages to natural resources in excess of the liability limits prescribed in Section 40.202 of this code. If that request is denied or additional money is required following receipt of the federal money, the commissioner has the authority to pay the requested reimbursement from the fund for a period of two years from the date the federal fund grants or denies the request for reimbursement.

(b) In addition to liability under Section 40.202 of this code, persons responsible for actual or threatened unauthorized discharges of oil are liable for natural resources damages attributable to the discharge.

(c) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a vessel shall not exceed the following:

(1) for a vessel that carries oil in bulk, as cargo, the greater of:

(A) $1,200 per gross ton; or

(B)(i) in the case of a vessel greater than 3,000 gross tons, $10 million; or

(ii) in the case of a vessel of 3,000 gross tons or less, $2 million; or

(2) for any other vessel, $600 per gross ton or $500,000, whichever is greater.

(d) The total liability for all natural resource damages of any person responsible for an actual or threatened unauthorized discharge of oil from a terminal facility shall not exceed the following:

(1) for each terminal facility with a capacity:

(A) above 150,000 barrels, $70 per barrel not to exceed $350,000,000;

(B) from 70,001 to 150,000 barrels, $10,000,000;

(C) from 30,001 to 70,000 barrels, $5,000,000;

(D) from 10,000 to 30,000 barrels, $2,000,000;

(2) for any other terminal, $500,000.

(e) The commissioner shall ensure that there will be no double recovery of damages or response costs.

(f) If any actual or threatened unauthorized discharge of oil was the result of gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation, the person responsible for such gross negligence or wilful misconduct or a violation of any applicable federal or state safety, construction, or operating regulation is liable for the full amount of all damages to natural resources.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 9, eff. Sept. 1, 1993.

Sec. 40.204. DEFENSES. The only defense of a person responsible for an actual or threatened unauthorized discharge of oil shall be to plead and prove that the discharge resulted solely from any of the following or any combination of the following:

(1) an act of war or terrorism;

(2) an act of government, either state, federal, or local;

(3) an unforeseeable occurrence exclusively occasioned by the violence of nature without the interference of any human act or omission; or

(4) the wilful misconduct or a negligent act or omission of a third party, other than an employee or agent of the person responsible or a third party whose conduct occurs in connection with a contractual relationship with the responsible person, unless the responsible person failed to exercise due care and take precautions against foreseeable conduct of the third party.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.205. THIRD PARTIES. If a responsible person alleges a defense under Section 40.204(4) of this code, the responsible person shall pay all response costs and damages. The responsible person shall be subrogated to any rights or cause of action belonging to those to whom such payment is made.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

SUBCHAPTER F. ENFORCEMENT

Sec. 40.251. PENALTIES. (a) A person who intentionally commits any of the following acts in violation of Subchapter C, D, or E shall be guilty of a Class A misdemeanor:

(1) operating a terminal facility or vessel without a discharge prevention and response plan;

(2) operating a terminal facility or vessel without establishing and maintaining financial responsibility;

(3) causing, allowing, or permitting an unauthorized discharge of oil;

(4) making a material false statement with a fraudulent intent in an application or report;

(5) with respect to the person in charge of a vessel from which an unauthorized discharge of oil emanates, taking the vessel from the jurisdiction of the commissioner prior to proving financial responsibility; or

(6) leaving, abandoning, or maintaining any structure or vessel in or on coastal waters, on public or private lands, or at a public or private port or dock if the structure or vessel is in a wrecked, derelict, or substantially dismantled condition.

(b) A person responsible for an unauthorized discharge of oil or the person in charge of any vessel or terminal facility from or at which an unauthorized discharge of oil emanates, who knows or has reason to know of the discharge and who fails to give immediate notification of the discharge to the commissioner, shall be:

(1) subject to a civil penalty of not less than $500 nor more than $250,000 for an individual or $500,000 for a corporation, partnership, association, or other entity; and

(2) guilty of a Class A misdemeanor.

(c) A person responsible for an unauthorized discharge of oil shall be subject to a civil penalty of not less than $250 nor more than $25,000 for each day of the discharge, or not more than $1,000 per barrel of oil discharged.

(d) A person responsible for an unauthorized discharge of oil who without sufficient cause fails to abate, contain, and remove pollution from the discharge pursuant to applicable federal and state requirements and plans shall be liable for a civil penalty of not more than $25,000 for each day the pollution is not abated, contained, and removed, or not more than three times the costs incurred by the fund as a result of the discharge.

(e) A person who with a fraudulent intent makes or causes to be made any material false statement in filing a claim or reporting any information concerning an actual or threatened unauthorized discharge of oil in response to the requirements of this chapter shall be guilty of a third degree felony.

(f) A person who violates any provision, rule, or order issued under Subchapter C, D, or E of this chapter shall be subject to a civil penalty of not less than $100 nor more than $10,000 per violation for each day of violation, not to exceed a maximum of $125,000.

(g) It is a defense to prosecution for a criminal offense under Subchapter C, D, or E of this chapter that the conduct complained of was committed pursuant to response or cleanup operations and was authorized by the national contingency plan, by a discharge response plan required under this chapter, or by an authorized federal or state official.

(h) The defenses to liability under Section 40.204 of this code shall be defenses to the assessment of penalties under this chapter for any unauthorized discharge of oil.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 17.001, eff. September 1, 2011.

Sec. 40.252. ADMINISTRATIVE PENALTIES. The commissioner may assess administrative penalties for the violations and in the amounts established in Section 40.251 of this code. In determining the amount of penalties, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.253. CUMULATIVE ENFORCEMENT. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.254. ORDERS AND HEARINGS. (a) The commissioner shall assess administrative penalties, pursue suspension of terminal facility discharge prevention and response certificates, and pursue the removal or disposal of derelict structures or vessels in accordance with this section.

(b) The commissioner shall issue a preliminary report if the commissioner, after an investigation, concludes that:

(1) a violation has occurred for which:

(A) a penalty should be assessed; or

(B) a discharge prevention and response certificate should be suspended; or

(2) there is a need for removal or disposal of a derelict vessel or structure.

(b-1) The preliminary report must:

(1) state the facts that support the commissioner's conclusion;

(2) in the case of a derelict vessel or structure, determine whether the vessel or structure is considered:

(A) a numbered vessel;

(B) a vessel or structure that has no intrinsic value; or

(C) a vessel or structure described by Section 40.108(c)(1), (2), or (3);

(3) recommend:

(A) that a penalty be imposed;

(B) that a certificate be suspended;

(C) that a derelict vessel or structure be removed or disposed of;

(D) that a derelict vessel or structure be removed or disposed of because it is a vessel or structure described by Section

40.108(c)(1), (2), or (3); or

(E) any combination of remedies under Paragraphs (A)-(D); and

(4) if a penalty under Subdivision (3)(A) is recommended, recommend the amount of the penalty.

(c) The commissioner shall serve written notice of the preliminary report to the person charged with the violation not later than the 10th day after the date on which the report is issued. The notice must include:

(1) a brief summary of the findings;

(2) a statement of the commissioner's recommendations;

(3) a statement of the right of the person charged with the violation to a hearing; and

(4) a copy of the preliminary report.

(c-1) Except as provided by Subsection (c-3), the notice required by Subsection (c) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person is unknown, by posting a copy of the notice on the facility, vessel, or structure and by publishing notice on the Internet website of the General Land Office and in the Texas Register at least two times within 10 consecutive days.

(c-2) If notice is given in the manner provided by Subsection (c-1), not later than the 20th day after the date on which the notice is served or mailed, or not later than the 20th day after the later of the date on which the notice was posted or the last date the notice was published, as applicable, the person charged with the violation or a person claiming ownership of the facility, vessel, or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(c-3) The notice required by Subsection (c) must be given by posting a copy of the notice on a derelict vessel or structure or by publishing notice on the Internet website of the General Land Office for 10 consecutive days if the derelict vessel or structure has been determined to have no intrinsic value under Subsection (b-1) and:

(1) the vessel or structure is not a numbered vessel or structure;

(2) there are no identifiable markings on the vessel or

structure for which the current owner can be reasonably identified for service; or

(3) the address of the person charged with the violation is unknown.

(c-4) If notice is given in the manner provided by Subsection (c-3), not later than the 10th day after the date on which the notice was posted or the last date the notice was published, the person charged with the violation or a person claiming ownership of the vessel or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(d) If a vessel or structure is removed without notice as authorized by Section 40.108(c), the commissioner shall serve written notice of the removal to the person charged with the violation not later than the 10th day after the date on which the removal occurs. The removal notice must:

(1) include the information required to be in a preliminary report notice under Subsection (c); and

(2) be provided in the manner described by Subsection (c-1), except that notice provided under the circumstances described by Subsection (c-1)(2) is not required to be posted on the vessel or structure.

(d-1) If notice is given in the manner provided by Subsection (d), not later than the 20th day after the date on which the notice is served or mailed, or not later than the 20th day after the last date the notice was published, as applicable, the person charged with the violation or a person claiming ownership of the vessel or structure may consent in writing to the report, including the commissioner's recommendations, or make a written request for a hearing.

(e)(1) If the person charged with the violation or a person claiming ownership of a facility, vessel, or structure for which notice is provided under Subsection (c-1), (c-3), or (d) consents to the commissioner's recommendations or does not timely respond to the notice, the commissioner by order shall take the recommended action or order a hearing to be held on the findings and recommendations in the report.

(2) If the commissioner takes the recommended action, the commissioner shall serve written notice of the decision to the person in the same manner as provided for notice of the preliminary report.

The person must comply with the order, including a removal order, and pay any penalty assessed.

(3) The commissioner is not required to provide notice under Subdivision (2) of this subsection if notice was provided under Subsection (c-1)(2), (c-3), or (d) and the subject of the notice is a vessel or structure that was removed in the manner provided by Section 40.108.

(f)(1) If the person charged with the violation or a person claiming ownership of a facility, vessel, or structure for which notice is provided under Subsection (c-1), (c-3), or (d) requests a hearing, the commissioner shall order a hearing and shall give written notice of that hearing.

(2) The hearing shall be held by a hearing examiner designated by the commissioner.

(3) The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the occurrence of the violation and a recommendation on suspension of the discharge prevention and response certificate, the amount of any proposed penalty, the removal or disposal of the derelict vessel or structure, or any combination of those remedies.

(4) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner by order may:

(A) find that a violation has occurred and assess a penalty;

(B) suspend a discharge prevention and response certificate;

(C) order the removal or disposal of a derelict vessel or structure;

(D) order any combination of those remedies; or

(E) find that no violation occurred.

(5) The commissioner shall serve notice to the person of the commissioner's decision. If the commissioner finds that a violation has occurred and assesses a penalty, suspends a discharge prevention and response certificate, or orders the removal or disposal of a derelict vessel or structure, the commissioner shall give to the person written notice of:

(A) the commissioner's findings;

(B) the amount of the penalty or the terms of the suspension or removal or disposal; and

(C) the person's right to judicial review of the

commissioner's order.

(g)(1) Not later than the 30th day after the date on which the commissioner's order is final, the person charged with the violation or a person claiming ownership of the facility, vessel, or structure shall comply with the order or file a petition for judicial review.

(2) On failure of the person to comply with the order or file a petition for judicial review, the commissioner may refer the matter to the attorney general for collection and enforcement.

(3) Judicial review of the order or decision of the commissioner shall be under Subchapter G, Chapter 2001, Government Code.

(h)(1) If a penalty is reduced or not assessed, the commissioner shall remit to the person charged with the violation the appropriate amount of any penalty payment plus accrued interest.

(2) Accrued interest on amounts remitted by the commissioner shall be paid for the period beginning on the date the penalty is paid to the commissioner and ending on the date the penalty is remitted at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank.

(i) Payment of an administrative penalty under this section shall preclude, in any action brought under this chapter, collection of a civil penalty for the violation specified in the commissioner's order.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 146, Sec. 13, 14, 16, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 4, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1324 (H.B. 3306), Sec. 3, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 3, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 4, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 259 (H.B. 1625), Sec. 5, eff.

September 1, 2017.

Sec. 40.255. ACTIONS. (a) The commissioner may seek injunctive relief to prevent a violation of this chapter from continuing or occurring.

(b) All actions on behalf of the state to enforce this chapter or recover civil penalties, unpaid administrative penalties, claims of the fund, response costs, and damages arising under this chapter shall be brought by the attorney general at the direction of the commissioner. In any such action in which the state prevails, the state shall be entitled to recover reasonable attorney fees.

(c) Repealed by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff. Sept. 1, 1993.

(d) Each owner or operator of a terminal facility or vessel subject to the provisions of this chapter shall designate a person in the state as his legal agent for service of process, and such designation shall be filed with the secretary of state. In the absence of such designation, the secretary of state shall be the designated agent for purposes of service of process under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1993, 73rd Leg., ch. 776, Sec. 10, eff. Sept. 1, 1993.

Sec. 40.256. INDIVIDUAL CAUSE OF ACTION. The remedies in this chapter are cumulative and not exclusive. This chapter does not require pursuit of any claim against the fund as a condition precedent to any other remedy, nor does this chapter prohibit any person from bringing an action at common law or under any other law not inconsistent with this chapter for response costs or damages resulting from a discharge or other condition of pollution covered by this chapter. No such action shall collaterally estop or bar the commissioner in any action brought by the commissioner under this chapter.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.257. VENUE. (a) Venue for all actions and prosecution of all offenses under this chapter may be brought in Travis County or in any county where the violation of this chapter that is the subject of the action or prosecution occurred.

(b) All appeals from administrative proceedings under this chapter shall be filed in a district court of Travis County, Texas, pursuant to Chapter 2001, Government Code.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

Sec. 40.258. FEDERAL LAW. (a) (1) The commissioner shall promulgate rules that, to the greatest extent practicable, conform to the national contingency plan and rules promulgated under federal law.

(2) The commissioner may impose requirements under such rules that are in addition to or vary materially from federal requirements if the state interests served by the requirements substantially outweigh the burdens imposed on those subject to the requirements.

(3) Any request for judicial review of any rule must be filed in a district court in Travis County within 90 days of the effective date of the rule or plan challenged.

(4) Any matter subject to judicial review under Subdivisions (1) through (3) of this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or for recovery of response costs or damages.

(b) In implementing this chapter, the commissioner to the greatest extent practicable shall employ federal funds unless federal funds will not be available in an adequate period of time.

(c) All federal funds received by the state relating to response to unauthorized discharges of oil under this chapter shall be deposited in the fund.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991. Amended by Acts 2003, 78th Leg., ch. 146, Sec. 15, eff. Sept. 1, 2003.

SUBCHAPTER G. MISCELLANEOUS PROVISIONS

Sec. 40.301. INTERSTATE COMPACTS. The commissioner may enter into compacts or agreements with other states consistent with and to further the purposes of this chapter. The commissioner may also participate in initiatives to develop multistate and international standards and cooperation on unauthorized discharge prevention and response.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.302. INSTITUTIONS OF HIGHER EDUCATION. The commissioner by interagency contract shall enter into agreements with state institutions of higher education for research, testing, and development of oil discharge prevention and response technology, oil discharge response training, wildlife and natural resources rescue and rehabilitation, development of computer models to predict the movements and impacts of unauthorized discharges of oil, and other purposes consistent with and in furtherance of the purposes of this chapter. Contracts or agreements relating to wildlife and aquatic resources shall be made in coordination with the Parks and Wildlife Department. To the greatest extent possible, contracts shall be coordinated with studies being done by other state agencies, the federal government, or private industry to minimize duplication of efforts.

Added by Acts 1991, 72nd Leg., ch. 10, Sec. 1, eff. March 28, 1991.

Sec. 40.304. SMALL SPILL EDUCATION PROGRAM. The commissioner shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, offshore support vessels, ferries, cruise ships, ports, marinas, and recreational boats. The small spill education program shall illustrate ways to reduce oil contamination of bilge water, accidental spills of motor oil and hydraulic fluid during routine maintenance, and spills during refueling. The program shall illustrate proper disposal of oil and promote strategies to meet shoreside oil handling and disposal needs of targeted groups. The program shall include a series of training materials and workshops and the development of educational materials.

Added by Acts 1993, 73rd Leg., ch. 776, Sec. 11, eff. Sept. 1, 1993.

SUBTITLE D. DISPOSITION OF THE PUBLIC DOMAIN
CHAPTER 51. LAND, TIMBER, AND SURFACE RESOURCES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the School Land Board.

(4) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(5) "Board of regents" means the board of regents of The University of Texas System.

(6) "Public school land" means all land of the state that is dedicated to the permanent school fund.

(7) "Appraiser" means a state certified or state licensed real estate appraiser who is employed by or contracts with the land office and who performs professional valuation services competently and in a manner that is independent, impartial, and objective.

(8) "Surveyed land" means all or part of any tract of land surveyed either on the ground or by protraction and dedicated to or acquired on behalf of the public school fund which is unsold and for which field notes are on file in the land office or that may be delineated on the maps of that office as such.

(9) "Unsurveyed land" means any land that is not included in surveys on file in the land office or surveys delineated on maps of that office.

(10) "Land" or "real property" means any interest in the physical land and appurtenances attached to the land, including improvements.

(11) "Market value" has the meaning assigned by Section 1.04, Tax Code.

(12) "Sovereign land" means land that has not been sold and severed by the sovereign.

Acts 1977, 65th Leg., p. 2417, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.02, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 280, Sec. 1, eff. June 18,

2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 1, eff. June 18, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 13, eff. June 19, 2009.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO THE MANAGEMENT OF PUBLIC SCHOOL AND ASYLUM LAND

Sec. 51.011. MANAGEMENT OF PUBLIC SCHOOL LAND. (a) Any land, mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be subject to the sole and exclusive management and control of the school land board and the commissioner under the provisions of this chapter and other applicable law.

(a-1) The board may acquire, sell, lease, trade, improve, maintain, protect, or otherwise manage, control, or use land, mineral and royalty interests, real estate investments, or other interests, including revenue received from those sources, that are set apart to the permanent school fund in any manner, at such prices, and under such terms and conditions as the board finds to be in the best interest of the fund.

(a-2) Not later than October 15 of each year, the board shall report to the Legislative Budget Board the sale of any land that is set apart to the permanent school fund for less than appraised value or the purchase of any land that is set apart to the permanent school fund for more than appraised value during the preceding state fiscal year.

(b) Notwithstanding any other provision of this chapter, land within 2,500 feet of a military base may not be sold or leased and an easement over the land may not be granted unless the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the grant will not adversely affect the mission of the military base.

(c) Any public land may be sold or leased, or an easement over

the property may be granted, to the United States for the use and benefit of the United States armed forces if the commissioner or the commissioner's designee, after consultation with appropriate military authorities, determines that the sale, lease, or easement would materially assist the military in accomplishing its mission. A sale, lease, or easement under this subsection must be at market value. The state shall retain all minerals it owns with respect to the land, but it may relinquish the right to use the surface to extract them.

(d) The commissioner shall determine whether a conveyance under this section takes priority over any preference otherwise granted by law, including the preferential right of a surrounding landowner. In making the determination, the commissioner must only consider the interests of preference holders who assert their preferences in writing after notice of the proposed conveyance is published in a newspaper of general circulation in the area. The commissioner shall, in the commissioner's discretion, balance the competing interests of the preference holders and the military. The commissioner's determination is final. After land is conveyed to the military, all competing preferences terminate.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 149, Sec. 13, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 280, Sec. 2, eff. June 18, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 3, eff. June 18, 2005.

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 4, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 1, eff. June 15, 2007.

Sec. 51.012. COMMISSIONER'S AUTHORITY. Subject to the authority of the board and to exceptions and restrictions that may be imposed by the constitution and laws of this state, the commissioner is vested with the authority necessary to carry out the provisions of this chapter relating to the sale and lease of public school land and to the protection of this land from free use and occupancy and from unlawful enclosure.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 3, eff. June 18, 2003.

Sec. 51.0125. LAND USED BY STATE AGENCY. Land that belongs to the permanent school fund as a result of having been deeded or given to the state and that has been used in the past by a state agency shall be first offered for sale or lease to state agencies before it can be sold or leased to any other party. No permanent school fund land may be used by a state agency without market value compensation to the permanent school fund.

Added by Acts 1993, 73rd Leg., ch. 991, Sec. 12, eff. Sept. 1, 1993. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 4, eff. June 18, 2003.

Sec. 51.013. CLASSIFICATION OF LAND. (a) As the public interest may require, the commissioner shall classify or reclassify all public school land and shall include a designation of the land, including a classification as agricultural, grazing, timber, or a combination of these classifications based on the facts in the particular case.

(b) After the classification is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification to be effective.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 5, eff. June 18, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 14, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 15, eff. June 19, 2009.

Sec. 51.014. RULES. The commissioner may adopt rules necessary to carry out the provisions of this chapter and may alter or amend the rules to protect the public interest.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 16, eff. June 19, 2009.

Sec. 51.015. FORMS. The commissioner shall adopt forms that are necessary or proper to transact business that he is required to transact and may request that the attorney general prepare the forms.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.016. DUTIES OF THE ATTORNEY GENERAL. The attorney general shall furnish the commissioner with advice and legal assistance that may be required to execute the provisions of this chapter.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.017. FURNISHING DATA TO BOARD OF EDUCATION. On request, the commissioner shall furnish to the State Board of Education all available data.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.018. RECORDS AND ACCOUNTS. The commissioner shall keep in his custody as records of his office each application, affidavit, obligation, and paper relating to the sale and lease of public school land and shall keep accurate accounts with each purchaser or lessee.

Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 6, eff. June 18, 2003.

Sec. 51.019. SPECIAL FEE. Each bidder on a mineral lease or land sale by the board shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 of this code.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 32, eff. Sept. 1, 1985.

Sec. 51.020. REFUNDS. (a) On presentation of proper proof, money paid in good faith to a fund in the State Treasury for public land or by a lessee of public land or minerals to which the fund is not entitled may be offset or credited by the commissioner against other sums owing or shall be refunded by the comptroller in the following instances:

(1) if an error is made in good faith and the refund, stating to whom payment is to be made, is supported by the official signature of the commissioner or the attorney general;

(2) if the payment is made according to law but title cannot issue or possession cannot pass because of a conflict in boundaries, an erroneous sale, an erroneous lease, or other cause;

(3) if there is a sale of leased land;

(4) if lease money is paid on a previous forfeited sale and the sale has been reinstated and the interest paid;

(5) if erroneous timber sales or leases have been made;

(6) if overpayments have been made in final payments to the comptroller because of decreased acreage or other cause;

(7) if reduction has been made in acreage of timber sold or leased; or

(8) if payments are made in good faith by claimants of land where the applicants have no right to purchase the land as revealed by investigation of title.

(b) After specific appropriations are made according to law, refunds shall be paid from the funds to which the payments have been credited.

(c) Any claim for refund except a refund covered by Subdivision (1) of Subsection (a) of this section shall be certified by the commissioner, verified by the affidavit of the claimant, and approved by the attorney general as to the correctness and as to whom the

refund is due.

(d) In the event of a failure of title or right of possession, money paid by any purchaser or lessee who subsequently sells the land or assigns the lease shall be refunded to the person on whom the loss falls.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 642, Sec. 5, eff. Aug. 26, 1991; Acts 1997, 75th Leg., ch. 1423, Sec. 14.03, eff. Sept. 1, 1997.

SUBCHAPTER C. SALE OF PUBLIC SCHOOL AND ASYLUM LAND

Sec. 51.051. SALE OF LAND. All sales of land described in Section 51.011 shall be made by or under the direction of the school land board.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 5, eff. June 18, 2005.

Sec. 51.052. CONDITIONS FOR SALE OF LAND. (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1175, Sec. 33(2), eff. June 19, 2009.

(b) A purchaser of land under this subchapter may make a down payment of an amount determined by the board and the board may set the terms and conditions of the sale, including the interest rate. On full payment and satisfaction of other conditions, the purchaser is entitled to a patent for the land. This subsection does not prevent the board from requiring a tract of land to be purchased for cash.

(c) Repealed by Acts 1987, 70th Leg., ch. 208, Sec. 14, eff. Aug. 31, 1987.

(d) Before the land under this chapter is sold, the appraiser must appraise the land at its market value and file a copy of the appraisal with the commissioner.

(e) The owner of land that surrounds a tract of land approved for sale by the board shall have a preference right to purchase the tract before the land is made available for sale to any other person,

provided the person having the preference right pays not less than the market value for the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(f) If the surrounding land is owned by more than one person, the owners of land with a common boundary with a tract of land approved for sale by the board shall have a preference right to purchase the tract before it is made available to any other person, provided the person with the preference right pays not less than the market value of the land as determined by the board and the board finds use of the preference to be in the best interest of the state. The board shall adopt rules to implement this preference right.

(g) If land is located within the boundaries of or adjacent to any state park, refuge, natural area, or historical site subject to the management and control of the Parks and Wildlife Department, the department has a preference right to purchase the land before it is made available to any other person. A sale to the department under this section may not be for less than the market value of the land, as determined by the board.

(h) The board may sell or exchange any interest in the surface estate of public school land directly to any state agency, board, commission, or political subdivision or other governmental entity of this state without the necessity of a sealed bid sale. All sales or exchanges made pursuant to this subsection shall be for not less than market value as determined by the board and under such other terms and conditions the board determines to be in the best interest of the state.

(i) If no bid meeting minimum requirements is received for a tract of land offered at a sealed bid sale under Subchapter D of Chapter 32, or if the transaction involves commercial real estate and the board determines that it is in the best interest of the permanent school fund, the asset management division of the land office may solicit proposals or negotiate a sale, exchange, or lease of the land to any person. The board must approve any negotiated sale, exchange, or lease of any land under this section.

(i-1) The land office shall post information related to the process for purchasing commercial real estate under Subsection (i) on the land office's Internet website.

(j) The board, in its sole discretion and in the best interests

of the permanent school fund as determined by the board and without regard to requirements of local governments as to the necessity of any such dedication, may dedicate permanent school fund land to any governmental unit for the benefit and use of the public in exchange for nonmonetary consideration with a value reasonably equivalent to or greater than the market value of the dedicated land, if the board determines that such an exchange would benefit the permanent school fund. The asset management division of the land office shall determine the value of the nonmonetary consideration and shall file a copy of its determination with the commissioner. Examples of public purposes for which permanent school fund land may be dedicated under this subsection include but are not limited to: (1) rights-of-way for public roads, utilities, or other infrastructure; (2) public schools; (3) public parks; (4) government offices or facilities; (5) public recreation facilities; and (6) residential neighborhood public amenities.

(k) The asset management division of the land office may contract for the services of a real estate broker or of a private brokerage or real estate firm to assist in any sale, lease, or exchange of land under this subchapter.

(l) If the board leases land under this subchapter and the lease includes the right to produce groundwater from the land, the lessee shall comply with the statutory provisions governing and the rules adopted by the groundwater conservation district, if any, in which the land is located, including the statutory provisions and rules governing the production and use of groundwater and the transfer of groundwater out of the district.

Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5242, ch. 965, Sec. 1, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 208, Sec. 14, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 383, Sec. 4, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 633, Sec. 5, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 13, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 293, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 7, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 6, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 726 (H.B. 2518), Sec. 1, eff.

September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 17, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 33(2), eff. June 19, 2009.

Sec. 51.054. RESERVATION OF MINERALS. (a) Except as otherwise provided in this section, land dedicated to the permanent school fund shall be sold subject to a reservation set by the board of not less than one-eighth of all sulphur and other mineral substances from which sulphur may be derived or produced and not less than one-sixteenth of all other minerals to the state; provided, that if leasing rights are retained hereunder, the reserved minerals shall be subject to lease as provided by Subchapter B, Chapter 52, Natural Resources Code, and Subchapters B and E, Chapter 53, Natural Resources Code. The mineral reservation to the state shall be determined by the board before the land is offered for sale. If the board determines that a mineral reservation under this section would substantially reduce the value of the surface of land by restricting its suitability for agricultural, commercial, or residential use, the board may take such action or waive such rights as are in the best interest of the permanent school fund, including, without limitation, establishing designated exploration or drilling sites, waiving surface or other rights of access or development, or conveying the land with no mineral reservation.

(b) Land that is set apart for the various asylum funds shall be sold with the oil, gas, coal, and all other minerals reserved to the fund to which the land belongs.

(c) The provisions of this section do not apply to oil and gas sold from public school land covered by Subchapter F, Chapter 52, of this code.

(d) The provisions of this section do not apply to vacancies covered by Section 51.201 of this code.

(e) An oil, gas, or other mineral lease on land in which the state reserves a mineral or royalty interest is not effective until a certified copy of the recorded lease is filed in the General Land Office.

Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1983, 68th Leg., p. 5243, ch. 965, Sec. 2, eff. June 19, 1983; Acts 1985, 69th Leg., ch. 923, Sec. 3, eff. Aug. 26, 1985; Acts 1995, 74th Leg., ch. 354, Sec. 3, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 8, eff. June 18, 2003.

Sec. 51.0551. LISTS OF PUBLIC LAND OFFERED FOR SALE: CRIMINAL PENALTIES. (a) A person, including a corporation or an association, commits an offense if he reproduces, prints, or prepares or sells or furnishes a printed, multigraphed, or mimeographed list prepared by or under the direction of the commissioner offering for sale or lease any state or public school land.

(b) This section does not prohibit the commissioner or land board from advertising in a newspaper or otherwise as is provided by law nor a newspaper or periodical from publishing the list in a regular issue as a news item.

(c) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

Added by Acts 1983, 68th Leg., p. 1021, ch. 235, art. 5, Sec. 1(a), eff. Sept. 1, 1983.

Sec. 51.056. APPLICATION OR REQUEST TO PURCHASE LAND. A person who wants to purchase public school land shall submit to the commissioner a written application or request in a form designated by the commissioner.

Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5243, ch. 965, Sec. 3, eff. June 19, 1983; Acts 1987, 70th Leg., ch. 208, Sec. 5, eff. Aug. 31, 1987; Acts 2003, 78th Leg., ch. 280, Sec. 9, eff. June 18, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 18, eff. June 19, 2009.

Sec. 51.065. NOTICE AND RECORD OF SALE. (a) The commissioner shall send a written notice of the sale of a tract of public school land to the county clerk of the proper county that includes the name and address of the purchaser and the price of the land.

(b) After receiving a notice of the sale of public school land, the county clerk shall record the notice at no charge in the official public records of the county.

(c) The notice of sale is a public record.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 12, eff. June 18, 2003.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 1, eff. September 1, 2017.

Sec. 51.066. LAND AWARD. (a) The commissioner shall prepare and issue a land award for each tract of sovereign land sold.

(b) Each land award shall be appropriately numbered and shall be worded in a manner that will constitute a receipt for the first or full payment after it is signed by the commissioner.

(c) One copy of the land award shall be retained in the land office, one copy shall be sent to the purchaser, and one copy shall be sent to the county clerk of the proper county to be recorded at no charge in the official public records of the county.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 19, eff. June 19, 2009.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 2, eff. September 1, 2017.

Sec. 51.067. INFORMATION REQUIRED WITH PAYMENTS. A person who is making a payment of principal, interest, or lease rental on land shall give the name of the original purchaser or lessee and shall sufficiently designate the land.

Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.068. FUND ACCOUNTS. (a) Payments of principal, interest, and lease rental shall be accounted for in a similar form but separate from first payments on land.

(b) The comptroller shall deposit 90 percent of the payments on land received each month to the probable fund to which the payments belong as indicated by the commissioner and shall hold the remaining 10 percent of the payments in the suspense account until the comptroller receives notice from the commissioner indicating the proper fund for the payments. After notice is received, the comptroller shall credit the full amount to the proper fund.

(c) The commissioner and comptroller shall keep an account with each fund according to advices given by them and shall retain the advices as permanent records.

Added by Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 5, eff. September 1, 2015.

Sec. 51.069. DISPOSITION OF PAYMENTS ON PUBLIC SCHOOL LAND. Payments on public school land received by the commissioner, including payments received as interest on the purchase of public school land, shall be transmitted to the comptroller to be credited to the permanent school fund.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.09, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.

Sec. 51.070. UNPAID PRINCIPAL ON PUBLIC SCHOOL LAND SALES. (a) Unpaid and delinquent principal on sales of public school land shall bear interest at a rate set by the board, which principal and interest shall be payable at the times and on such terms as are established by the board.

(b) No patent may be issued for any public school land until all principal, accrued interest, late charges, and other fees and expenses are paid in full.

(c) Any unpaid principal and interest is considered delinquent on the 30th day after the date payment of the principal and interest is due for the obligation.

(d) After the payment of principal and interest becomes delinquent under the obligation, notice of delinquency and subsequent potential forfeiture must be provided by certified mail, return receipt requested, to the last known address of the obligee and must be documented in the records of the land office.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5244, ch. 965, Sec. 4, eff. June 19, 1983; Acts 1995, 74th Leg., ch. 354, Sec. 1, eff. Aug. 28, 1995; Acts 2003, 78th Leg., ch. 280, Sec. 13, eff. June 18, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 20, eff. June 19, 2009.
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 21, eff. June 19, 2009.

Sec. 51.071. FORFEITURE OF LAND. (a) If principal, accrued interest, late charges, and other fees and expenses on a sale of sovereign land are not paid when due as required by the terms set by the board, the land is subject to forfeiture by the commissioner by entry on the file containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.
(b) After the entry is made on the file, the land and all payments that have been made for it are forfeited to the state, and the land may be resold in accordance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5244, ch. 965, Sec. 5, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 280, Sec. 14, eff. June 18, 2003.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 22, eff. June 19, 2009.

Sec. 51.072. EFFECT OF FORFEITURE. In cases of forfeiture, the original obligations and reinstatement fees are as binding as if no

forfeiture occurred.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 15, eff. June 18, 2003.

Sec. 51.073. CLASSIFICATION AND SALE OF LEASED AND FORFEITED LAND. Before it is sold, the commissioner shall classify and determine the market value of land on which leases have expired and land forfeited to the state.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 16, eff. June 18, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 1, eff. June 15, 2007.
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 23, eff. June 19, 2009.

Sec. 51.074. REINSTATEMENT OF LAND PURCHASES. (a) If no rights of third persons have intervened, the purchasers or their vendees, heirs, or legal representatives, who claim land that has been forfeited for nonpayment of principal and interest, may have the claim reinstated on written request by paying into the State Treasury the amount of all principal and interest due on the claim up to the date of reinstatement.
(b) The right to reinstate a claim under this section is limited to the last purchaser from the state, or his vendees, heirs, or legal representatives, and must be exercised within six months from the date of the forfeiture.

Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 17, eff. June 18, 2003.

Sec. 51.075. FORFEITURE OF A DECEASED PURCHASER'S LAND. (a) If a purchaser of land dies, the heirs or legal representatives of

the deceased have one year following November 1 after the purchaser's death in which to make payment before the commissioner declares the land to be forfeited.

(b) If the forfeiture is declared by the commissioner within the time period stated in Subsection (a) of this section, it will be set aside on proper proof of death if no rights of third parties have intervened.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.076. LEGAL PROCEEDINGS. None of the provisions of Sections 51.071 through 51.072 and 51.074 through 51.075 of this code shall prevent the state from instituting legal proceedings necessary:

(1) to enforce a forfeiture;

(2) to recover the full amount of principal and interest that may be owed to the state at the time the forfeiture occurred; or

(3) to protect another right to the land.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 18, eff. June 18, 2003.

Sec. 51.077. LIEN. To secure the payment of principal and interest due on a sale of public school land and university land the state has an express lien for the use and benefit of the fund to which the land belongs. The lien is in addition to any right and remedy that the state has for enforcement of the payment of principal and interest due and unpaid, up to and including the period required to reinstate the land award and obligation.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 19, eff. June 18, 2003.

Sec. 51.0771. REINSTATEMENT FEE. (a) A reinstatement fee is due when a forfeited award is reinstated. The reinstatement fee is

calculated at one and one-half percent of all amounts delinquent at the time of the reinstatement.

(b) The comptroller must receive the reinstatement fee before the forfeited award is reinstated.

(c) Amounts received in the form of a reinstatement fee are considered proceeds from the sale of permanent school fund land and shall be deposited in the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 280, Sec. 20, eff. June 18, 2003.

Sec. 51.078. TRANSFER OF INDEBTEDNESS. (a) If a person or the Federal Farm Loan Bank, with the consent of the owner of land covered by Section 51.077 of this code, pays to the state the principal and interest due on any obligation given for the land, the commissioner, on written request of the owner, may execute, acknowledge, and deliver to the person or the Federal Farm Loan Bank a written transfer of the indebtedness held by the state. The written request of the owner shall be acknowledged in the manner required for the conveyance of real estate and shall be accompanied by an affidavit of ownership.

(b) The person or the Federal Farm Loan Bank is subrogated to all the rights, liens, and remedies held by the state to secure and enforce the payment of the principal and interest that was paid to the state.

(c) If the land claimed by a person claiming to be the owner is held under evidence of title that the law or rules of the land office do not authorize to be filed in the land office, the commissioner may admit the owner to be the person that the person or the Federal Farm Loan Bank paying the indebtedness admits to be the owner, and on making this admission the instrument of transfer shall be executed.

(d) None of the provisions of this section shall change any part of the law or rules that apply to the land office with relation to titles to land and issuance of patents.

Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.079. TRANSFERS GENERALLY. (a) An owner of public school land purchased from the state may sell the land or a definite

portion of the land in any size tract.

(b) If land to be sold is separated from another portion of land but is not sufficiently designated by metes and bounds in the papers offered to be filed so that it may be identified with certainty, the commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 21, eff. June 18, 2003.

Sec. 51.080. PERSONAL TRANSFERS. (a) A vendee who obtains through personal transfer a whole survey or a whole portion of a survey purchased from the state as a whole or who obtains through personal transfer a portion of a survey purchased from the state as a whole or in a quantity less than the whole survey is entitled to become a substitute purchaser directly from the state in the manner provided in this section.

(b) With the approval of the commissioner, the vendee may file in the land office a complete chain of title through personal transfers that have been duly executed and recorded in the counties in which the land or a part of the land is located and shall pay the fees provided by law.

(c) After the papers are filed in the land office, the substituted purchaser shall have his portion of land separated from the other portion of land, if any, on the records of the land office and shall assume and be liable to the state for all unpaid principal and interest due the state for the land conveyed by the deeds that are filed, together with all obligations and penalties attaching to the original purchase.

(d) The obligation of the original purchaser and the obligation of all vendors of the substituted purchaser are enforceable against the substituted purchaser as if he were the original purchaser from the state, and the obligation of the vendor or vendors of the substituted purchaser are canceled.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.081. TRANSFERS OTHER THAN PERSONAL TRANSFER. A person who claims title through a source other than by personal transfer to a definite portion of a survey that is less than the whole survey purchased from the state, with the approval of the commissioner, may have the portion of land that he claims separated from the other portion of the survey on the records of the land office by filing in the land office evidence of claims that may be required by the commissioner and by paying the fees provided by law for papers filed as evidence of the claim or a right to a separation of the area.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.082. LIABILITY OF VENDEE. After a separation of land is made on the records of the land office, the portion that is separated shall be charged and credited with its pro rata part of the principal and interest due and paid to November 1 preceding the date of the filing of the transfers or other papers.

Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.083. PATENT ON PART OF A TRACT. (a) If an owner or claimant of land whose ownership or claim is shown on the records of the land office desires a patent on a portion of the whole tract, the owner or claimant, with the approval of the commissioner, may file field notes for the portion of the tract on which the patent is desired, together with the filing fee required by law, and may obtain a patent for the portion of the tract after the full price is paid, together with all fees required by law.

(b) If the ownership of the tract is evidenced by personal transfer, the patent shall be issued to the owner and his assigns, but if the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns who hold title by original purchase or in the name of the person and his assigns who appear on the records to hold title through the last personal transfer.

(c) If a patent is issued in the name of any person other than the legal owner, the patent and the rights granted in the patent

inure to the benefit of the legal owner.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.085. TIME FOR PURCHASE OF LAND. Each purchaser of land has the option of paying the purchase price in full at any time, together with all fees, and obtaining a patent for the land.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.086. SALE OF ESCHEATED PERMANENT SCHOOL LAND. (a) All sales of escheated land that is a part of the permanent school fund must be made at a price that may not be less than the minimum price set by the court under Section 71.107, Property Code, and in the same manner as the sale of public school land as provided by this chapter.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 1175, Sec. 33(13), eff. June 19, 2009.

(c) When escheated permanent school land is sold, this state shall reserve all minerals in the land for the permanent school fund.

Added by Acts 1983, p. 3729, ch. 576, Sec. 4, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(a), eff. Sept. 1, 2003.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 24, eff. June 19, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 33(13), eff. June 19, 2009.

SUBCHAPTER D. LEASE OF LAND

Sec. 51.121. LEASE OF UNSOLD LAND. (a) Unsold public school land may be leased for any purpose the commissioner determines is in the best interest of the state under terms and conditions set by the commissioner. Improvements on land under this subsection shall not become the property of the state and shall be taxed in the same manner as other private property.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 2

(b) Improvements on land leased under Subsection (a) shall be removed prior to the expiration of the lease unless the commissioner determines it to be in the best interest of the state that removal of the improvements not be required and includes such a provision in the terms and conditions of the lease.

Text of subsection as amended by Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 2

(b) Improvements on land leased under Subsection (a) shall be removed prior to the expiration of the lease unless the commissioner determines it to be in the best interest of the state that removal of the improvements not be required and includes a provision in the terms and conditions of the lease that the improvements on the land shall become property of the state upon termination or expiration of the lease.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 387, Sec. 14(1), eff. June 15, 2007.

(d) In leases granted under this subchapter, the commissioner may grant the lessee a preference right to purchase the leased premises. In order to grant this preference right, the commissioner must include such a provision in the lease. The provision may provide that the preference right to purchase may be exercised at any time during the term of the lease. If the commissioner does include the preference right to purchase in the lease, the lessee shall have a preference right to purchase the leased premises before the leased premises are made available for sale to any other person. All sales under this subsection must be for a price determined by the board and under any other terms and conditions that the commissioner deems to be in the best interest of the state. The preference right to purchase granted under this subsection is superior to any other preference right to purchase granted under any other section of this code or under any other law. Nothing in this subsection shall be construed to allow the commissioner to grant a preference right to purchase submerged land.

(e) Subject to the provisions of Title 2, Utilities Code, any district created by Section 59, Article XVI, Texas Constitution, that leases unsold public school land for power generation through the use of renewable energy sources, such as wind, solar, or geothermal energy and other sustainable sources, or a district participating in

a power generation project using renewable energy sources which is located on unsold public school lands may distribute and sell electric energy generated on public school lands within or without the boundaries of the district and may issue bonds to accomplish such purposes pursuant to Chapter 1371, Government Code, or other applicable law. For any such power generation project which is located on both public lands and private lands, the district may sell outside its boundaries only the pro rata portion of the total amount as is generated on the public lands. All electric energy generated pursuant to this section shall be sold for resale only to utilities authorized to make retail sales under Title 2, Utilities Code, and shall be subject to the solicitation process and integrated resource planning process authorized by that title.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 472, ch. 215, Sec. 1, eff. May 17, 1979; Acts 1983, 68th Leg., p. 3729, ch. 576, Sec. 5, eff. Jan. 1, 1984; Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 4, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 991, Sec. 14, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.40, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.352, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 22, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 2, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 14(1), eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 2, eff. June 15, 2007.

Sec. 51.122. ADVERTISEMENT OF LEASES. Leases under the provisions of this subchapter may be advertised in the manner provided in Section 32.107 of this code.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.123. LEASE APPLICATION. A person who desires to lease

land shall submit a written application to the commissioner specifying and describing the particular land he desires to lease.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.124. AWARD OF LEASE. (a) A lease shall be awarded to the highest responsible bidder.

(b) The lease shall be awarded under the rules and in the quantities the commissioner considers to be in the best interest of the state and not inconsistent with the equities of the occupant.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept. 1, 1985.

Sec. 51.125. REJECTION OF BID OR OFFER TO LEASE. Any bid or offer to lease may be rejected by the commissioner for fraud, collusion, or other good and sufficient cause before the lease is signed.

Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 33, eff. Sept. 1, 1985.

Sec. 51.126. NOTIFICATION OF ACCEPTANCE AND EXECUTION OF LEASE. After the applications are received, the commissioner shall give written notification to the successful applicant that his bid or offer to lease is accepted and execute a lease to the applicant in the name and by the authority of the State of Texas.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.127. RECORDING MEMORANDUM OF LEASE. (a) The commissioner shall prepare a descriptive memorandum of the lease at the time the lease is executed and deliver the lease and the

memorandum to the lessee.

(b) The lessee shall deliver the memorandum of the lease to the clerk of the county in which the land is located.

(c) The clerk shall record the memorandum in the county clerk's office.

(d) On payment of the recording fee, the clerk shall deliver the recorded memorandum to the lessee. The lessee shall provide to the commissioner a certified copy of the recorded memorandum.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 3, eff. June 15, 2007.

Sec. 51.129. LIEN. (a) During the continuance of the lease and after forfeiture, the state has a lien on all property owned by the lessee which is located on the leased premises to secure payment of rent due.

(b) The lien is superior to all other liens.

(c) A reservation of the lien in the lease is not essential to preserve its validity.

Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.131. SOIL AND WATER CONSERVATION PLANS. (a) For each lease issued under this subchapter for agricultural or grazing purposes, the commissioner may require the lessee to implement a soil and water conservation plan approved by the commissioner. The commissioner, in reviewing a plan, and the lessee, in implementing a plan, may be assisted by the United States Department of Natural Resources Conservation Service.

(b) The commissioner by rule shall adopt a procedure for reviewing and approving soil and water conservation plans required by Subsection (a) of this section.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 34, eff. Sept. 1, 1985.
Amended by Acts 2003, 78th Leg., ch. 280, Sec. 23, eff. June 18,

2003.

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

Sec. 51.171. PURPOSE; APPLICATION OF OTHER LAW. (a) This subchapter controls the purchase and lease of vacant land and the authority of the commissioner and the board to:

(1) determine whether a vacancy exists; and

(2) sell and lease vacant land.

(b) To the extent a provision of this subchapter conflicts with another law relating to vacant land or Chapter 2001, Government Code, this subchapter controls.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.172. DEFINITIONS. In this subchapter:

(1) "Administratively complete" means a vacancy application that complies with Section 51.176 and any rule adopted by the commissioner regarding the filing of a vacancy application.

(1-a) "Applicant" means any person, including a good-faith claimant, who files a vacancy application.

(1-b) "Application commencement date" means:

(A) the date, as designated in the commissioner's notice to the applicant required by Section 51.177(b); or

(B) the date, as designated in the commissioner's notice to the applicant required by Section 51.177(d), indicating that any deficiency in the vacancy application has been resolved.

(2) "Good-faith claimant" means a person who, on the application commencement date:

(A) occupies or uses or has previously occupied or used, or whose predecessors in interest in the land claimed to be vacant have occupied or used, the land or any interest in the land for any purposes, including occupying or using:

(i) the surface or mineral estate for any purposes, including exploring for or removing oil, gas, sulphur, or other

minerals and geothermal resources from the land;

(ii) an easement or right-of-way; or

(iii) a mineral royalty or leasehold interest;

(B) has had, or whose predecessors in interest have had, the land claimed to be vacant enclosed or within definite boundaries recognized in the community and in possession under a chain of title for a period of at least 10 years with a good-faith belief that the land was included within the boundaries of a survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the land if the land were actually located within the boundaries of the survey or surveys;

(C) is the owner of land:

(i) that adjoins the land claimed to be vacant; and

(ii) for which no vacancy application has been previously filed; or

(D) holds title under a person described by Paragraph (A), (B), or (C) or is entitled to a distributive share of a title acquired under an application filed by a person described by Paragraph (A), (B), or (C).

(3) "Interest" means any right or title in or to real property, including a surface, subsurface, or mineral estate. "Interest" includes a right or title described as follows:

(A) a fee simple title;

(B) a determinable fee or other leasehold or mineral interest created under a conveyance instrument, including a mineral lease;

(C) a mineral royalty, nonparticipating royalty, or overriding royalty interest described by Section 51.194(c);

(D) a life estate;

(E) a remainder or reversionary interest; or

(F) a secured interest under a lien.

(4) "Necessary party" means:

(A) an applicant or good-faith claimant whose present legal interest in the surface or mineral estate of the land claimed to be vacant may be adversely affected by a vacancy determination;

(B) a person who asserts a right to or who claims an interest in land claimed to be vacant;

(C) a person who asserts a right to or who claims an interest in land adjoining land claimed to be vacant as shown in the records of the land office or the county records, including tax

records, of any county in which all or part of the land claimed to be vacant is located;

(D) a person whose name appears in the records described by Paragraph (C); or

(E) an attorney ad litem appointed under Section 51.180.

(5) "Survey report" means a written report of a survey conducted by a licensed state land surveyor or a county surveyor of the county in which a majority of the land claimed to be vacant is located.

(6) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was not, on the application commencement date:

(i) subject to an earlier subsisting application;

(ii) subject to a vacancy application denied with prejudice;

(iii) the subject of pending litigation relating to state ownership or possession of the land; or

(iv) subject to a previous vacancy application that has been finally adjudicated by the commissioner or a court of this state or the United States.

(7) "Vacancy application" means a form submitted to the commissioner by an applicant to:

(A) initiate a determination by the commissioner whether land claimed to be vacant is vacant; and

(B) purchase or lease vacant land.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 25, eff. June 19, 2009.

Sec. 51.173. DISPOSITION OF VACANT LAND. (a) Vacant and unsurveyed public school land shall be located, sold, and leased under this subchapter, except:

(1) submerged lands within tidewater limits;

(2) all islands, flats, and emergent lands within tidewater limits;

(3) natural lakes; and

(4) riverbeds, including channels and islands in riverbeds, above tidewater limits.

(b) This subchapter does not alter or diminish the public domain status of the surface estate of riverbeds and channels and islands in riverbeds that are located above tidewater limits.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.174. GENERAL POWERS AND DUTIES OF COMMISSIONER. (a) The commissioner may:

(1) delegate responsibility for implementing this subchapter;

(2) perform any other act necessary to administer and implement the purposes of this subchapter, including entering into a contract with a private party to provide the notices required under this subchapter; and

(3) terminate without prejudice a vacancy application if an applicant fails to comply with this subchapter or a rule adopted under this subchapter.

(b) The commissioner may grant an extension of time to comply with a requirement under this subchapter. For each application, the commissioner may grant not more than a total of 30 days in extensions of time to comply with one or more requirements of this subchapter, excluding any extensions of time related to the survey report under this subchapter. The commissioner may grant not more than 90 days in extensions of time to comply with a requirement related to the survey report under this subchapter.

(c) The commissioner shall adopt rules necessary and convenient

to administer this subchapter.

(d) The commissioner shall advise the board relating to the market value of the surface, mineral, and leasehold estates of vacant land.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 24, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.175. GENERAL POWERS AND DUTIES OF BOARD. (a) The board shall set the terms and conditions for each sale and lease of a vacancy.

(b) The board shall adopt rules governing the terms and conditions for the sale and lease of a vacancy. The rules shall be adopted and amended as necessary to be consistent with real property law of this state and other applicable law.

(c) The board may adopt rules governing mineral classification, royalty reservations, and awards of royalty reservations and preferential rights to an applicant or to a good-faith claimant in addition to the provisions prescribed by this subchapter.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 25, eff. June 18, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.176. VACANCY APPLICATION; FILING. (a) To purchase or lease land claimed to be vacant, a person must file a vacancy application on a form prescribed by the commissioner. A completed application must include:

(1) a description of the land claimed to be vacant that is sufficient to locate the land on the ground;

(2) a written statement indicating whether the applicant seeks to purchase the land claimed to be vacant or obtain a mineral lease on the land or both purchase the land and obtain a mineral lease on the land;

(3) a list, in a format prescribed by the commissioner, containing the name and last known mailing address of each necessary party whose name appears in the records described by Section 51.172(4)(C);

(4) an affidavit executed by the applicant affirming that the applicant conducted a diligent search of all the records described by Section 51.172(4)(C) in preparing the list required by Subdivision (3);

(5) if applicable, a statement of the basis for and documentary proof for an assertion of good-faith-claimant status;

(6) at the applicant's discretion:

(A) a survey report, including:

(i) the field notes describing the land and the lines and corners surveyed; and

(ii) a plat depicting the results of the survey; or

(B) an abstract of title to any land that adjoins the land claimed to be vacant; and

(7) any other information required by the commissioner.

(b) The applicant must file the original and a duplicate copy of the vacancy application with the county clerk of each county in which all or part of the land claimed to be vacant is located.

(c) The county clerk shall mark the exact date and hour of filing on the original and a duplicate copy of the vacancy application and shall return a marked copy to the person filing the application. The original shall be recorded in the official public records of the county. The failure to record a vacancy application as provided by this subsection does not affect the validity of the application filing.

(d) Not later than the fifth day after the date an applicant files the vacancy application with the county clerk, the applicant shall file a duplicate copy of the marked copy received from the county clerk with the county surveyor of each county in which all or part of the land claimed to be vacant is located if that county has a county surveyor.

(e) Priority among vacancy applications covering the same land claimed to be vacant is determined by the earliest time of filing indicated by the date and hour marked on the application by the county clerk.

(f) The applicant shall submit to the commissioner two

duplicate copies of the marked copy that has been file-stamped by the county clerk not later than the 30th day after the date the vacancy application is filed with the county clerk. The commissioner shall mark the date the two duplicate copies are received on each copy, assign a file number to the vacancy application, and return a marked duplicate copy containing the file number to the applicant.

(g) The applicant shall include a filing fee set by the commissioner in an amount of not less than $100.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 682 (H.B. 1679), Sec. 1, eff. September 1, 2007.

Acts 2017, 85th Leg., R.S., Ch. 370 (H.B. 3423), Sec. 3, eff. September 1, 2017.

Sec. 51.177. PROCESSING VACANCY APPLICATION. (a) Not later than the 45th day after the date the commissioner accepts the duplicate copies as properly filed by the applicant as provided by Section 51.176(f), the commissioner shall:

(1) determine whether the vacancy application is administratively complete; and

(2) provide to the applicant the notice required by this section.

(b) If the commissioner determines that the vacancy application is administratively complete, the commissioner shall provide written notice to the applicant that:

(1) informs the applicant that the application is administratively complete;

(2) states the application commencement date; and

(3) states the amount of any deposit required under Section 51.178 and the date by which the applicant must pay the deposit.

(c) If the commissioner determines that the vacancy application is not administratively complete, the commissioner shall provide written notice to the applicant that:

(1) informs the applicant that the application is not

administratively complete;

(2) provides a list of any deficiencies the applicant must resolve; and

(3) states a reasonable period of not more than 30 days from the date of the notice to resolve any listed deficiencies.

(d) Not later than the 30th day after the date provided under Subsection (c)(3) to resolve any deficiencies, the commissioner shall determine whether the vacancy application is administratively complete. If the commissioner determines that the vacancy application is administratively complete, the commissioner shall provide the notice required by Subsection (b). If the commissioner determines that the vacancy application is not administratively complete, the commissioner shall:

(1) dismiss the application without prejudice; and

(2) provide written notice to the applicant informing the applicant that the application is not administratively complete and is dismissed without prejudice.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 26, eff. June 19, 2009.

Sec. 51.178. DEPOSIT. (a) The commissioner may recover from the applicant state funds expended in evaluating and investigating the application, providing notice, preparing a survey, appointing an attorney ad litem, and conducting hearings under this subchapter.

(b) The commissioner shall require the applicant to submit a deposit in an amount sufficient to pay the reasonable costs under Subsection (a) not later than the 30th day after the application commencement date.

(c) If the amount deposited is insufficient, the commissioner shall require a reasonably necessary supplemental deposit. If a supplemental deposit is required, the applicant must make the deposit not later than the 30th day after the date the commissioner requests the supplemental deposit.

(d) An applicant may not challenge or appeal the amount of the required deposits, and the applicant's refusal or failure to make the required deposits in the period prescribed by this section terminates the application without prejudice.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 33.01, eff. Jan. 11, 2004; Acts 2003, 78th Leg., 3rd C.S., ch. 3, Sec. 33.02, eff. Jan. 11, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.179. DISPOSITION OF DEPOSITS. (a) The commissioner shall deposit all initial and supplemental deposits received under this subchapter to the credit of a separate trust account in the state treasury. The comptroller, on the commissioner's order, shall make disbursements from that account for purposes authorized by this subchapter.

(b) After proceedings on a vacancy application are concluded and all expenditures authorized under this subchapter are paid, the commissioner shall provide to the applicant a complete statement of all deposits and expenditures and shall remit to the applicant any balance remaining from the deposit or supplemental deposits made by the applicant.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.180. ATTORNEY AD LITEM. (a) If the applicant cannot provide evidence to the commissioner to establish the applicant's ownership of all interests as defined by Section 51.172 in the land surrounding the land claimed to be vacant, the commissioner shall investigate the ownership interests of the land claimed to be vacant and the surrounding land to ensure that all necessary parties have been identified and located.

(b) The investigation must conclude not later than the 60th day after the application commencement date. If the investigation yields any evidence that a necessary party may not have been identified and located, as determined by the commissioner, the commissioner shall, not later than the 30th day after the conclusion of the investigation, appoint an attorney ad litem to identify and locate all necessary parties.

(c) The commissioner shall provide the attorney ad litem with all documents submitted by the applicant and the results of the investigation to identify necessary parties, and the attorney ad litem shall search public land records and other available records to identify and locate necessary parties.

(d) If any necessary party cannot be located, the attorney ad litem shall represent the interests of that necessary party.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2007, 80th Leg., R.S., Ch. 682 (H.B. 1679), Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 27, eff. June 19, 2009.

Sec. 51.181. NOTICE TO NECESSARY PARTIES. (a) Not later than the 30th day after the application commencement date, and at any time after that date that the commissioner considers it necessary to notify an identified necessary party, the commissioner shall provide to each necessary party identified and located as of that date a written notice that:

(1) informs the necessary party that a vacancy application has been filed;

(2) states the application commencement date; and

(3) includes:

(A) a copy of the vacancy application and any attachments; and

(B) a form for requesting subsequent notices regarding the application.

(b) If the attorney ad litem is unable to locate an identified necessary party, the attorney ad litem shall notify the commissioner in writing, and the commissioner shall provide notice required under this section by publication in the same manner prescribed by the Texas Rules of Civil Procedure.

(c) Except as provided by Subsection (d), a necessary party is not entitled to notices subsequent to the notice provided under Subsection (a) unless the party requests subsequent notices.

(d) The commissioner shall notify each necessary party of a final order issued under Section 51.188.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 28, eff. June 19, 2009.

Sec. 51.182. FILING OF EXCEPTIONS TO APPLICATION. (a) Not later than the 60th day after the date of the commissioner's notice under Section 51.181(a), a necessary party may file an exception to the vacancy application, any documentation attached to the application, or any other documents or public records that may be used by the commissioner to make a determination.

(b) A necessary party must:

(1) file an exception with the land office; and

(2) provide a copy of the filing to each necessary party that requested subsequent notice as provided by Section 51.181.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.183. INVESTIGATION. (a) The commissioner shall conduct an investigation of the vacancy application.

(b) The investigation shall include:

(1) an evaluation of the vacancy application;

(2) a determination that the vacancy application was filed as provided by Section 51.176; and

(3) a review of public records at the land office relating to the land claimed to be vacant.

(c) The investigation may include a review of:

(1) any survey conducted by a licensed state land surveyor or by the county surveyor of a county in which all or part of the land claimed to be vacant is located; or

(2) any documents or public records necessary to determine whether a vacancy exists, including a review of public records relating to the land claimed to be vacant at:

(A) the state archives; or

(B) any county in which all or part of the land claimed to be vacant is located.

(d) An investigation may include a survey requested by the commissioner under Section 51.184 or a surveyor's report as provided by Section 51.185.

(e) The commissioner shall record the names of the persons consulted, the documents and surveys reviewed, and the relevant law and other materials used in the investigation.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.184. COMMISSIONER'S SURVEY. (a) To investigate a vacancy application under Section 51.183, the commissioner may require a survey. If the commissioner requires a survey, the commissioner shall appoint a licensed state land surveyor who is not associated with the vacancy application to prepare a report as provided by Section 51.185. The commissioner may limit the scope of the work performed by the surveyor.

(b) A necessary party may observe a survey conducted under this section. A survey will not be delayed to accommodate a necessary party who provides notice to the commissioner that the party intends to observe the surveyor conducting the survey.

(c) The commissioner shall mail a notice of intention to survey to each necessary party not later than the 30th day before the date the surveyor begins work. The notice must contain:

(1) the proposed starting date of the survey;

(2) the name, address, and telephone number of the surveyor; and

(3) a statement informing the necessary party that any necessary party may observe the field work of the surveyor conducting the survey.

(d) The fees and expenses paid for the survey are the same as those provided by law. If the fees and expenses are not provided by law, the commissioner shall contract for fees and expenses reasonably necessary for the scope of the required work. Contracts under this subsection:

(1) must include hourly rates, categories of reimbursable expenses, and an estimated completion date; and

(2) may include other expenses the commissioner considers reasonable.

(e) The commissioner shall adopt rules regarding the removal of an appointed surveyor on the grounds of bias, prejudice, or conflict. The rules must permit the commissioner to remove an appointed surveyor on the commissioner's own motion or on the motion of a necessary party.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.185. SURVEYOR'S REPORT. (a) Not later than the 120th day after the date a surveyor is appointed under Section 51.184, the surveyor shall file a written report of the survey, the field notes describing the land and the lines and corners surveyed, a plat depicting the results of the survey, and any other information required by the commissioner. The commissioner may extend the time for filing the report as reasonably necessary.

(b) The survey report must also contain:

(1) the name and last known mailing address of:

(A) each person who has possession of the land described in the vacancy application; and

(B) each person determined by the surveyor to have an interest in the land; and

(2) all abstract numbers associated with surveys of land adjoining the land claimed to be vacant.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.186. COMPLETION OF SURVEY. (a) The commissioner shall serve a true copy of the survey report filed by the surveyor on each necessary party, including those named in the survey report, by certified mail, return receipt requested, not later than the 30th business day after the date the survey report is filed with the land office.

(b) Any necessary party may file exceptions to the surveyor's report not later than the 30th day after the date the survey report is mailed to the necessary party by the commissioner. Any exceptions must be filed with the land office and a copy must be sent by the party filing the exception to each necessary party who has requested subsequent notice under Section 51.181.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.187. HEARING. (a) If the commissioner has not issued a final order with a finding of "Not Vacant Land" on or before the first anniversary of the application commencement date and one or more exceptions have been filed under Section 51.182(a) or 51.186(b), the commissioner shall order a hearing to determine if a vacancy exists. A hearing under this subchapter:

(1) shall be held not later than the 60th day after the

date the hearing is ordered;

(2) shall be conducted as a contested case hearing subject to Chapter 2001, Government Code; and

(3) may be waived by written agreement of all necessary parties and the commissioner.

(b) Not later than the 30th day after the date a hearing is ordered under Subsection (a), the commissioner shall provide notice of the hearing date to each necessary party.

(c) Not later than the 60th day after the date of the hearing, the commissioner shall enter a final order as provided by Section 51.188.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 29, eff. June 19, 2009.

Sec. 51.188. COMMISSIONER'S FINAL ORDER. (a) At any time during or after an investigation of or hearing regarding a vacancy application, the commissioner may determine that land claimed to be vacant is not vacant and issue a final order with a finding of "Not Vacant Land" or an order finding a vacancy if a hearing is not required under Section 51.187.

(b) After a hearing conducted under Section 51.187, the commissioner shall issue a final order with a finding of "Not Vacant Land" or issue an order finding a vacancy exists. Not later than the 15th day after the date the final order is issued, the commissioner shall notify each necessary party of the final order by providing each party a copy of the final order.

(c) A final order finding a vacancy exists must contain:

(1) a finding by the commissioner that the land claimed to be vacant is unsurveyed public school land that is not in conflict with land previously titled, awarded, or sold by the state as established by:

(A) clear and convincing proof for an application to which an exception has been filed as provided by Section 51.182; or

(B) a preponderance of the evidence for an application to which no exceptions have been filed as provided by Section 51.182;

(2) the field note description used to determine the vacancy, which must be sufficient to locate the land on the ground;

(3) an accurate plat of the land that is:

(A) consistent with the field notes; and

(B) prepared by a licensed state land surveyor or a county surveyor of the county in which a majority of vacant land is located; and

(4) any other matters required by law or as the commissioner considers appropriate.

(d) In determining the boundaries and size of a vacancy, the commissioner is not restricted to a description of the land claimed to be vacant that is provided by the applicant, the surveyor, or any other person. The commissioner shall adopt the description of a vacancy that best describes the land found to be vacant and that is consistent with the investigation under this subchapter.

(e) The commissioner shall attach to the commissioner's final order a document entitled "Notice of Claim of Vacancy." The commissioner shall prescribe the contents of the notice. The commissioner shall file the notice with the county clerk and any county surveyor of each county in which all or part of the vacancy is located.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 30, eff. June 19, 2009.

Sec. 51.189. APPEAL. (a) A final order with a finding of "Not Vacant Land" under Section 51.188 may not be appealed. The final order is conclusive regarding the land described in the vacancy application or the land investigated by the commissioner as a result of the vacancy application.

(b) A final order finding a vacancy exists is subject to appeal by a necessary party that has standing to appeal under Section

51.192. The district court in the county in which a majority of the vacant land is located has jurisdiction of an appeal under this subchapter. A necessary party must file an appeal not later than the 30th day after the date the commissioner's final order is issued. All necessary parties must be provided notice of an appeal under this section by the party filing the appeal.

(c) A person whose predecessor in title was bound by the outcome of an appeal is bound to the same extent the predecessor in title would be bound if the predecessor in title continued to hold title.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.190. SCOPE OF REVIEW. In an appeal of the commissioner's final order determining that a vacancy exists, the district court shall conduct a trial de novo.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.191. ISSUES REVIEWABLE. The court may review the commissioner's declaration of good-faith-claimant status only in conjunction with a review of a final order determining that a vacancy exists.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.192. STANDING TO APPEAL. A person may appeal the commissioner's final order determining that a vacancy exists if the person:

(1) is a necessary party;

(2) has a present legal interest in the surface or mineral estate at the time a vacancy application is filed; or

(3) acquires a legal interest before the date of the commissioner's final order.

Amended by Acts 2001, 77th Leg., ch. 1418, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.193. APPLICATION FOR AND DETERMINATION OF GOOD-FAITH-CLAIMANT STATUS. (a) A necessary party may apply for good-faith-claimant status not later than the 90th day after the date the commissioner issues a final order finding that a vacancy exists.

(b) The application must include certified copies of the applicable county records supporting the good-faith claimant's status.

(c) Not later than the 120th day after the date the commissioner issues a final order finding that a vacancy exists, the commissioner shall declare whether a necessary party is a good-faith claimant.

(d) A person who is denied good-faith-claimant status may:

(1) request a hearing by the commissioner; or

(2) appeal the denial as part of any appeal of a final order finding that a vacancy exists.

(e) If the commissioner grants a hearing, the commissioner shall:

(1) determine the scope of the hearing;

(2) provide timely notice of the time and place of the hearing to each necessary party; and

(3) provide each necessary party an opportunity to be heard.

(f) A declaration of good-faith-claimant status grants a preferential right to the claimant to purchase or lease the land or

an interest in the land as provided by Section 51.194. The declaration does not confer any other rights.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Sec. 51.194. PREFERENTIAL RIGHT OF GOOD-FAITH CLAIMANT. (a) A good-faith claimant who has been notified by the commissioner that a vacancy exists under this subchapter has a preferential right to purchase or lease the interest claimed in the land before the land was declared vacant. The preferential right may be exercised after a final judicial determination or after the commissioner's final order and the period for filing an appeal has expired.

(a-1) If a good-faith claimant does not apply to purchase or lease the interest before the later of the 121st day after the date the commissioner's order becomes final or the 60th day after the date of the final judicial determination of an appeal under this subchapter, then the good-faith claimant's preferential right expires.

(a-2) If a good-faith claimant does not close a transaction to purchase or lease the interest before the 121st day after the date the terms and conditions are determined by the board, then the good-faith claimant's preferential right expires.

(b) A good-faith claimant may purchase or lease the vacancy by submitting a written application to the board.

(c) A good-faith claimant that owns a separate surface interest, a contractual right to a mineral or leasehold interest, a leasehold interest, or a royalty interest in the land occupied or used that is found to be part of or to include a vacancy is entitled to purchase or lease that same interest in the portion of the land determined to be vacant at the price and under the conditions set by the board and in accordance with the law in effect on the date the application is filed.

(d) If the interest purchased under Subsection (c) is less than a permanent interest, then:

(1) the interest purchased is limited to the duration of a deed, contract, instrument, or lease in existence before the filing of the vacancy application and subject to a division of the amount of

the royalty between the state and the existing royalty owners, provided that the state retains at least one-half of the amount of the royalty interest; and

(2) the interest and any remaining mineral interest, including all executory rights, vest with the state at the expiration of the deed, contract, instrument, or lease.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 31, eff. June 19, 2009.

Sec. 51.195. PURCHASE OR LEASE BY APPLICANT. (a) If no good-faith claimant exists or if no good-faith claimant exercises a preferential right within the applicable period, the applicant has a preferential right to purchase or lease the land determined to be vacant on or before the 60th day after the date:

(1) the commissioner determines that no good-faith claimant exists; or

(2) the period for a good-faith claimant to exercise a preferential right to purchase or lease the land determined to be vacant expires.

(b) If a good-faith claimant exercises the claimant's preferential right in the land determined to be vacant, the applicant has a preferential right to either:

(1) an award by the board of a perpetual 1/32 nonparticipating royalty of the full mineral interest of the vacancy; or

(2) a preferential right to purchase or lease any remaining interest in the land determined to be vacant.

(c) If a lease described by Section 51.194(d)(1) exists on the land determined to be vacant, the applicant's 1/32 nonparticipating royalty interest, as described by Subsection (b)(1), shall be taken from the state's royalty interest as reserved under Section 51.194(d)(1) for the duration of the lease, provided that the applicant's share for the duration of the lease may never equal more than the interest retained by the state.

(d) An applicant who exercises a preferential right under

Subsection (a) or (b)(2) may purchase or lease the land or an interest in the land:

(1) at the price set by the board;

(2) subject to the royalty reservations provided by the board; and

(3) in accordance with the law in effect on the date the application is filed.

Amended by:

Acts 2005, 79th Leg., Ch. 874 (S.B. 1103), Sec. 1, eff. June 17, 2005.

SUBCHAPTER F. PATENTS

Sec. 51.241. ISSUANCE OF PATENT. The commissioner shall issue a patent when the records of his office reflect that full payment for land has been made where required and fees that are due on the land have been paid to the land office and have not been withdrawn, including the fee for recording the patent in the county or counties in which the land is located.

Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.242. PATENT FEES. When a person applies for a patent, he shall pay to the land office in addition to all other required payments a fee set by the commissioner in an amount not less than $1 for each county in which all or a part of the land is located and shall give the name and address of the owner or agent.

Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(h), eff. Sept. 1, 1983.

Sec. 51.243. REQUISITES OF A PATENT. (a) Each patent for land from the state shall be issued in the name and by authority of the state under the state seal and the land office seal and shall be signed by the governor and countersigned by the commissioner.

(b) Before the patent is delivered to the person who is

entitled to it, it shall be registered in the land office patent book.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 35, eff. Aug. 30, 1993.

Sec. 51.244. DELIVERY OF PATENT. (a) When a patent is ready for delivery, the commissioner shall send it, together with the check for payment of the fee required by Section 51.242 of this code and the name and address of the owner or his agent, by certified mail to the clerk of the proper county.

(b) On receiving the patent, the clerk shall record it and shall send the patent, together with the name and address of the owner or his agent and the remaining recording fees, by certified mail to the clerk of another proper county until the patent has been recorded in each county in which all or part of the land is located.

(c) After the patent is recorded in all the proper counties, it shall be sent by certified mail to the proper party.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 354, Sec. 2, eff. Aug. 28, 1995.

Sec. 51.245. DECEASED PATENTEE. A patent issued in the name of a person who is deceased at the time the patent is issued conveys and secures valid title to the heirs or assignee of the deceased person.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.246. ACQUISITION OF DEED OF ACQUITTANCE TO EXCESS ACREAGE. (a) If the area of a tract of land that is titled or patented exceeds the quantity provided in the title or patent and if under the existing law the title to all or a part of the tract may be affected by the existence of the excess acreage, the person who owns the survey or portion of the survey or has an interest in it may pay for the total excess acreage in the survey or the total excess in a

given tract out of the patented or titled survey at the price fixed by the board.

(b) Any person who owns an interest in a titled or patented survey or any portion of a titled or patented survey in which excess acreage is located and who desires to pay for the excess acreage shall file with the commissioner a request for a determination of market value by an appraiser with corrected field notes in the form provided by law, together with a sworn statement of facts relating to his right to purchase and other evidence of his right to purchase which may be required by the commissioner. The corrected field notes shall describe the patented tract, and if purchasing excess in a portion of a tract, shall include a description of the portion in which the applicant is making application to purchase excess.

(c) If it appears that excess acreage actually exists and that the applicant is entitled to obtain it under the law, the commissioner shall execute a deed of acquittance covering the land in the name of the original patentee or his assignees with a mineral reservation or with no mineral reservation accordingly as may have been the case when the survey was titled or patented.

(d) The transfer shall inure distributively to the benefit of the lawful owners of the land in proportion to their holdings.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 26, eff. June 18, 2003.

Sec. 51.247. PATENTS FOR LAND THAT CANNOT BE PATENTED BY OTHER METHODS. (a) Any headright survey, homestead donation, preemption survey, scrip survey, or other survey awarded or sold before August 20, 1931, which has been held and claimed in good faith by a person for 10 years before the date of application for a patent but which cannot be patented under existing law may be patented on payment to the commissioner of the purchase price as set by the board.

(b) The patent shall be issued to the owner of record as shown in the records of the land office and shall inure distributively to the legal owners of the land.

(c) If a tract of school land has been occupied by mistake as part of another tract, the occupant shall have a preference right for a period of six months after discovery of the mistake to purchase the

land at the same price paid or contracted to be paid for the land actually conveyed to him.

Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.248. DOUBTFUL CLAIM. If it appears to the commissioner from the records of his office or from information given to him under oath that there is an illegality in a claim, the commissioner, if he considers it necessary, shall refer the matter to the attorney general, and the attorney general's written decision is sufficient authority for the commissioner to issue or withhold the patent.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.249. CONFLICTING SURVEYS. If conflicts exist between surveys, the commissioner shall issue patents to the portions of the surveys that are free from conflict.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.250. CONFLICTING TITLE. (a) If a patent to land is issued by mistake on any valid claim for land and is afterwards found to be in conflict with an older title, the owner of the patent or any part of the land embraced by the patent which is in conflict may return the patent to the commissioner for cancellation. If the owner of the land that is the subject of the conflict cannot obtain the patent, he shall return to the commissioner legal evidence of his title to the patent or part of the patent.

(b) The person returning the patent or filing the evidence also shall make and file with the commissioner an affidavit stating that he is still the owner of the land and has not sold or transferred it.

(c) If the land office records or a duly certified copy of a judgment of a court of competent jurisdiction that has adjudicated the title reflects that a conflict exists, the commissioner may cancel the patent or the part of a patent that appears to belong to

the party making the application.

(d) In cases where a survey in a block or system of surveys conflicts on one side or more, and omits an unpatented strip on another side or sides due to the patent being issued on an erroneous subsequent survey not conforming to the original and recognized pattern for the block or system, the commissioner, at the request of all parties owning under said patent, may cancel said patent and issue a corrected patent that shall conform to said block or system of surveys. In the event that excess acreage exists, a deed of acquittance shall be procured, as provided by law, and will be issued simultaneously with the corrected patent. This Subsection (d) shall not adversely affect the rights of any party in or entitled to possession of land affected by this subsection, but merely clarifies that the ownership in any land in a block or system of surveys exists as if the patent had been correctly issued on the date the erroneous patent was issued. The rights of a claimant under applicable law shall be construed as if the corrected patent had been originally issued.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2239, ch. 535, Sec. 1, eff. Aug. 31, 1981.

Sec. 51.251. PARTIAL CONFLICT OF TITLE. If there is only a partial conflict of title under a patent, the commissioner in the manner provided in Section 51.250 of this code may cancel any patent presented to him and issue a patent to the applicant for the portion of the land that is covered by his original patent but that is not in conflict with the older title if the area can be determined from the field notes.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.252. REFUND OF PURCHASE MONEY. (a) If a patent cannot be issued for land because of a conflict, erroneous survey, or illegal sale or if a patent is issued for land and is later canceled, the comptroller, on proper proof, may issue his warrant to the proper parties for amounts paid in good faith to the State Treasury for

taxes, lease payments, or purchase payments on this land.

(b) Proof of these good-faith payments may be shown by the certificate of the commissioner if the records of the land office show that a patent cannot be issued because of conflict, erroneous survey, or illegal sale or that a patent has been canceled.

(c) The provisions of this section do not apply to surveys on which the errors may be corrected.

Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.253. CORRECTED PATENT. (a) An owner of land in one or more patented surveys may apply to the General Land Office for a corrected patent to correct scriveners' errors or obvious errors in the field note description of the original patent as determined by the commissioner. The application must clearly identify the error in the original patent.

(b) The General Land Office may adopt rules relating to the implementation and operation of this section, including rules requiring the payment of reasonable filing and processing fees by an applicant for a corrected patent.

Added by Acts 1983, 68th Leg., p. 752, ch. 182, Sec. 1, eff. Sept. 1, 1983.

SUBCHAPTER G. EASEMENTS

Sec. 51.291. GRANTS OF EASEMENTS. (a) Except as provided by Subsection (b), the commissioner may execute grants of easements or other interests in property for rights-of-way or access across, through, and under unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, the state-owned riverbeds and beds of navigable streams in the public domain, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for:

(1) telephone, telegraph, electric transmission, and power lines;

(2) oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater Port Act of 1974

(33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature;

(3) irrigation canals, laterals, and water pipelines;

(4) roads; and

(5) any other purpose the commissioner considers to be in the best interest of the state.

(b) Consent to conduct an activity that would disturb or remove marl, sand, gravel, shell, or mudshell on or near the surface of a state-owned riverbed or the bed of a navigable stream in the public domain may be granted only under Chapter 86, Parks and Wildlife Code.

(c) Money received by the land office for the grants of easements through and under the state-owned riverbeds and beds of navigable streams in the public domain shall be deposited in a special fund account in the state treasury to be used for the removal or improvement of unauthorized structures on permanent school fund land. This fund does not impose a duty or obligation on the state to accept ownership of, remove, or improve unauthorized structures on permanent school fund land.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 35, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 991, Sec. 15, eff. Sept. 1, 1993.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 4, eff. June 15, 2007.

Sec. 51.292. EASEMENTS AND LEASES FOR CERTAIN FACILITIES. The commissioner may execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms, and for any other purpose the commissioner determines to be in the best interest of the state, to be located on state land other than land owned by The University of Texas System.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 5, eff. June 15, 2007.

Sec. 51.295. CONDITIONS FOR EASEMENT. Telephone, telegraph, electric transmission, powerline, and pipeline right-of-way easements and easements or rights-of-way for irrigation canals, laterals, and water pipelines shall be executed on terms to be determined by the commissioner.

Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 7, eff. June 15, 2007.

Sec. 51.296. TERM OF EASEMENTS. (a) The term for easements or leases granted under Sections 51.291 and 51.292 may be for any term the commissioner deems to be in the best interest of the state.

(b) The commissioner by rule shall set the amount of and shall collect money for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in the special fund account described in Section 52.297 of this code.

(d) A right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 37, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 7, eff. Aug. 31, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 8, eff. June 15, 2007.

Sec. 51.297. RECORDING EASEMENTS. (a) Each easement granted under this subchapter shall be recorded in the county clerk's office of the county in which the land is located, and the recording fee

shall be paid by the person who obtains the easement.

(b) The person who obtains an easement under this subchapter shall furnish to the commissioner a certified copy of the easement.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 12, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 208, Sec. 12, eff. Aug. 31, 1987.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 9, eff. June 15, 2007.

Sec. 51.299. FEES FOR CERTAIN FACILITIES. The rent to be charged for an easement or lease for an electric substation site, pumping station, loading rack, tank farm, or road or for an easement for a purpose not specifically listed by Section 51.291 or 51.292 but granted in the best interest of the state shall be an amount agreed to between the lessee and the commissioner.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 38, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 10, eff. June 15, 2007.

Sec. 51.2995. WAIVER OR REDUCTION OF EASEMENT FEES IN CERTAIN CIRCUMSTANCES. The commissioner may waive or reduce an easement fee if the easement granted is to improve the infrastructure of the land, including production and transportation of alternative or renewable energy resources.

Added by Acts 2003, 78th Leg., ch. 280, Sec. 27, eff. June 18, 2003.

Sec. 51.300. DISPOSITION OF INCOME. Income received by the commissioner under this subchapter from public school land shall be credited to the permanent school fund. Other income received by the commissioner on other land under this subchapter shall be credited to

the General Revenue Fund.

Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 328, Sec. 5, eff. Jan. 1, 2004.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 11, eff. June 15, 2007.

Sec. 51.301. INTEREST ON PAST-DUE PAYMENTS. Payments under this subchapter that are past due shall bear interest at a rate equal to the rate imposed by the comptroller under Section 111.060, Tax Code, for delinquent payments due the state, except that if the commissioner enters into an agreement with the grantee of the easement or lease specifying a lower rate, the payments bear interest at that lower rate.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 12, eff. June 15, 2007.

Sec. 51.302. PROHIBITION AND PENALTY. (a) No person may construct or maintain any structure or facility on land owned by the state, nor may any person who has not acquired a proper easement, lease, permit, or other instrument from the state as required by this chapter or Chapter 33 and who owns or possesses a facility or structure that is now located on or across state land continue in possession of the land unless he obtains from the commissioner or the board an easement, lease, permit, or other instrument required by this chapter or Chapter 33 for the land on which the facility or structure is to be constructed or is located.

(b) A person who constructs, maintains, owns, or possesses a facility or structure on state land without a proper easement or lease from the state under this chapter or under Chapter 33 of this code is liable for a penalty of not less than $50 or more than $1,000 a day for each day that a violation occurs. The penalty shall be recovered by the commissioner under Section 51.3021 of this code or

in a civil action by the attorney general.

(c) A person who owns, maintains, or possesses an unauthorized facility or structure is, for purposes of this section, the person who last owned, maintained, or possessed the facility or structure.

(d) The commissioner or attorney general may also recover from a person who constructs, maintains, owns, or possesses a facility or structure on state land without the proper easement the costs to the state of removing that facility or structure under Section 51.3021 of this code.

(e) Penalties and costs recovered under this section shall be deposited in the special fund established under Sections 52.297 and 53.155 of this code.

(f) This section is cumulative of all other applicable penalties or enforcement provisions of this code.

(g) In lieu of seeking administrative penalties or removal of the facility or structure under Section 51.3021 of this code, the commissioner may elect to accept ownership of the facility or structure as a fixture and may exercise the state's rights as owner of the facility or structure by filing notice of such ownership in the real property records of the county in which the facility or structure is located. For facilities or structures located on coastal public land and connected with the ownership of adjacent littoral property, notice of ownership shall be filed in the county in which the adjacent littoral property is located.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 39, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 465, Sec. 1, eff. June 11, 1991; Acts 1993, 73rd Leg., ch. 991, Sec. 16, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 280, Sec. 28, eff. June 18, 2003.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 387 (S.B. 654), Sec. 13, eff. June 15, 2007.

Sec. 51.3021. REMOVAL OF FACILITY OR STRUCTURE BY COMMISSIONER. (a) The commissioner may remove and dispose of a facility or structure on land owned by the state if the commissioner finds the facility or structure to be:

(1) without the proper easement or lease from the state

under Chapter 33 or 51 of this code; or

(2) an imminent and unreasonable threat to public health, safety, or welfare.

(b) Before the commissioner may remove a facility or structure under this section or impose a penalty under Section 51.302 of this code, the commissioner must give written notice to a person who is constructing, maintains, owns, or possesses the facility or structure. The notice must state:

(1) the specific facility or structure that is without proper easement or lease or that threatens public health, safety, or welfare;

(2) that the person who is constructing, maintains, owns, or possesses the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land without a proper lease or easement; or

(B) within a reasonable time specified by the commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(3) that failure to remove the facility or structure may result in liability for a penalty under Section 51.302(b) of this code in an amount specified, removal by the commissioner and liability for the costs of removal, attachment of a lien to the adjacent littoral property to secure payment of the penalty and costs of removal, or any combination of such remedies; and

(4) that the person who is constructing, maintains, owns, or possesses the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(c) The notice required by Subsection (b) must be given:

(1) by service in person or by registered or certified mail, return receipt requested; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the facility or structure and by publishing notice on the Internet website of the land office and in the Texas Register for 10 consecutive days.

(d) The commissioner by rule shall adopt procedures for a hearing under this section.

(e) The commissioner must grant a hearing if a hearing is requested. A person who does not timely request a hearing waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the facility or structure and pay any penalty assessed. If a hearing is held, the commissioner shall issue a final order concerning removal of the facility or structure and payment of a penalty.

(f) The trial courts of this state shall give preference to an appeal from a final order of the commissioner under this section as provided by Section 23.101(a), Government Code.

(g) The commissioner may contract for the removal and disposal of a facility or structure under this section and may pay the costs of removal from the special fund established under Sections 52.297 and 53.155 of this code or from funds appropriated by the legislature.

(h) If the person who is constructing, maintains, owns, or possesses the facility or structure does not pay assessed penalties, removal costs, and other assessed fees and expenses not later than the 60th day after the entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts or attachments of the facility or structure to offset those costs;

(2) record a lien, in the total amount of the penalties, costs, and other fees and expenses assessed, against the adjacent littoral property;

(3) request the attorney general to institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(4) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed on account of the unauthorized facility or structure on state land and its removal by the commissioner.

(i) The lien authorized by this section arises and attaches at the time a notice of lien is recorded and indexed in the real property records in the county where the adjacent littoral property is located. The notice of lien must contain a legal description of the adjacent littoral property, the name of the owner of the adjacent littoral property, if known, and the total amount of the penalties, costs, and other fees. The lien is subordinate to the rights of

prior bona fide purchasers or lienholders on the adjacent littoral property.

(j) The decision to remove a facility or structure under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a facility or structure or to remedy or warn of a hazardous condition on state land.

(k) A wrecked, derelict, or substantially dismantled vessel that is moored or left in place for at least 21 days without the consent of the commissioner is considered a structure for purposes of this section.

Added by Acts 1991, 72nd Leg., ch. 465, Sec. 2, eff. June 11, 1991. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 17, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 216 (H.B. 2096), Sec. 5, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 6, eff. September 1, 2015.

Sec. 51.303. VENUE. The venue for suits by or against the state under Sections 51.291 through 51.3021 of this code or for violation of provisions of Sections 51.291 through 51.302 of this code shall be in Travis County.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 465, Sec. 3, eff. June 11, 1991.

Sec. 51.304. EASEMENTS FOR SOIL CONSERVATION AND FLOOD PREVENTION. The commissioner may execute grants of easements on unsold public school land to conservation and reclamation districts for soil conservation and flood prevention projects authorized by the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.), as amended.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.305. TERMS AND FORM OF GRANT. The grant of the easement may contain any provisions that the commissioner considers necessary to protect the interests of the state and may be perpetual or for a term of years.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.306. CONSIDERATION. The consideration paid to the state for the grant of the easement under Section 51.304 of this code shall be determined by the commissioner to compensate the state for any damage to the land or to the use of the land caused by the easement, but if the commissioner determines that the benefits resulting from the grant of the easement are more than the damage, the commissioner may waive the consideration for the easement.

Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.307. RESERVATION OF MINERAL RIGHTS. Mineral rights together with the right to explore for, produce, and market the minerals in land granted as an easement under Section 51.304 of this code shall be reserved to the state and shall be subject to lease for minerals in the same manner as other unsold public school land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. SALE OF TIMBER, GAYULE, AND LECHUGUILLA

Sec. 51.341. DEFINITION. In this subchapter, "timbered land" means land that is valued chiefly for the timber located on it.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.342. SALE OR LEASE OF TIMBER. Timber located on public land shall be sold or leased in full tracts for cash at its market

value.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 29, eff. June 18, 2003.

Sec. 51.343. RULES. Subject to the provisions of this chapter, the commissioner shall adopt rules for the sale of timber which are considered necessary and judicious.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.344. APPLICATION TO PURCHASE TIMBER. An application to purchase timber shall be made in the manner provided for filing an application to purchase land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.345. INGRESS AND EGRESS FROM LAND. The purchaser of timber without the land is entitled to ingress and egress on the land for a period of five years after the date of the award to remove or protect the timber on the land.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.346. REVERSION OF TITLE TO TIMBER. After the five-year period provided in Section 51.345 of this code, title to the timber reverts to the fund to which the land belongs and is subject to sale by the state.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.347. SALE OF GAYULE AND LECHUGUILLA. The board may sell the gayule or lechuguilla growing or found on the public school land, exclusive of timber.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.348. CONDITIONS OF SALE. The sale of gayule and lechuguilla may be on any terms and conditions and with any limitations that the board considers most advantageous and in the best interest in protecting the public school fund and the state.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 51.349. CONTRACTS. The board may enter into any contract including an executory contract of sale which they consider wise for the purpose of having the commercial properties and value of gayule and lechuguilla determined, but it may not spend any public money or incur any liability on behalf of the state through these contracts.

Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. ACQUISITION OF PUBLIC SCHOOL LAND

Sec. 51.401. REAL ESTATE SPECIAL FUND ACCOUNT. (a) The board may designate funds received from any land, mineral or royalty interest, real estate investment, or other interest, including revenue received from those sources, that is set apart to the permanent school fund under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, for deposit in the real estate special fund account of the permanent school fund in the State Treasury to be used by the board as provided by this subchapter.

(b) The real estate special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the real estate special fund account of the permanent school fund.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1368, Sec. 10, eff. June 15, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1368, Sec. 10, eff. June 15, 2007.

(e) Section 403.095, Government Code, does not apply to a fund account created under this section.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 1993, 73rd Leg., ch. 991, Sec. 18, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 900, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 328, Sec. 6, eff. Jan. 1, 2004.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 7, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 3, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 4, eff. June 15, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 10, eff. June 15, 2007.

Sec. 51.402. USE OF DESIGNATED FUNDS. (a) Except as provided by Subsection (c), the board may use funds designated under Section 51.401 for any of the following purposes:

(1) to add to a tract of public school land to form a tract of sufficient size to be manageable;

(2) to add contiguous land to public school land;

(3) to acquire, as public school land, interests in real property for biological, commercial, geological, cultural, or recreational purposes;

(4) to acquire mineral and royalty interests for the use and benefit of the permanent school fund;

(5) to protect, maintain, or enhance the value of public school land;

(6) to acquire interests in real estate;

(7) to pay reasonable fees for professional services related to a permanent school fund investment; or

(8) to acquire, sell, lease, trade, improve, maintain, protect, or use land, mineral and royalty interests, or real estate

investments, an investment or interest in public infrastructure, or other interests, at such prices and under such terms and conditions the board determines to be in the best interest of the permanent school fund.

(b) Before using funds under Subsection (a), the board must determine, using the prudent investor standard, that the use of the funds for the intended purpose is authorized by Subsection (a) and in the best interest of the permanent school fund. A determination by the board on the use of funds under this section is conclusive unless the determination was made as a result of fraud or obvious error.

(b-1) The board may confer with one or more employees of the board or with a third party regarding an investment or potential investment in real estate, including the acquisition or potential acquisition of interests in real estate, to the extent permitted to the board of trustees of the Texas growth fund under Section 551.075, Government Code.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 493 (H.B. 4388), Sec. 3

(c) Notwithstanding Subsection (a), on January 1 of each even-numbered year, the market value of the investments under Subsections (a)(6) and (8) may not exceed an amount that is equal to 15 percent of the market value of the permanent school fund on that date.

Text of subsection as amended by Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 8

(c) On January 1 of each even-numbered year, the market value of the investments made under Subsections (a)(6) and (8) may not exceed an amount that is equal to 15 percent of the market value of the assets held by the board and the State Board of Education as part of the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 2001, 77th Leg., ch. 900, Secs. 2, 3, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 280, Sec. 30, eff. June 18, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 8, eff. June 18, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 5, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 493 (H.B. 4388), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 8, eff. September 1, 2019.

Sec. 51.4021. APPOINTMENT OF SPECIAL FUND MANAGERS, INVESTMENT CONSULTANTS, OR ADVISORS. (a) The board may appoint investment managers, consultants, or advisors to invest or assist the board in investing funds designated under Section 51.401 by contracting for professional investment management or investment advisory services with one or more organizations that are in the business of managing or advising on the management of real estate investments.

(b) To be eligible for appointment under this section, an investment manager, consultant, or advisor shall agree to abide by the policies, requirements, or restrictions, including ethical standards and disclosure policies and criteria for determining the quality of investments and for the use of standard rating services, that the board adopts for real estate investments of the permanent school fund. Funds designated under Section 51.401 may not be invested in a real estate investment trust, as defined by Section 200.001, Business Organizations Code.

(c) Compensation paid to an investment manager, consultant, or advisor by the board must be consistent with the compensation standards of the investment industry and compensation paid by similarly situated institutional investors.

(d) Chapter 2263, Government Code, applies to investment managers, consultants, or advisors appointed under this section. The board by rule shall adopt standards of conduct for investment managers, consultants, or advisors appointed under this section as required by Section 2263.004, Government Code, and shall implement the disclosure requirements of Section 2263.005 of that code.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 6, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 9, eff. September 1, 2019.

Sec. 51.404. TITLE SECURITY. (a) Real property acquired under this chapter shall be conveyed to the state by warranty deed.

(b) The board may purchase or acquire title insurance for any real property purchased under this chapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40. Amended by Acts 2003, 78th Leg., ch. 280, Sec. 32, eff. June 18, 2003.

Sec. 51.405. CONTRACTS FOR PURCHASE. The board may enter into contracts for the purchase of property under this subchapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.406. DEDICATION TO PERMANENT SCHOOL FUND. Land acquired under this subchapter is dedicated to the permanent school fund and is subject to sale and lease in the same manner and under the same authority as any other real property dedicated to the permanent school fund.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.407. RULES. The board shall adopt rules for the implementation of this subchapter.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 40, eff. Nov. 5, 1985.

Sec. 51.408. ETHICS POLICY AND TRAINING. (a) In addition to any other requirements provided by law, the board shall adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the funds designated under Section 51.401. The ethics policy must include provisions that address the following issues as they apply to the management and investment of the funds and to persons responsible for managing and investing the funds:

(1) general ethical standards;

(2) conflicts of interest;

(3) prohibited transactions and interests;

(4) the acceptance of gifts and entertainment;
(5) compliance with applicable professional standards;
(6) ethics training; and
(7) compliance with and enforcement of the ethics policy.

(b) The ethics policy must include provisions applicable to:
(1) members of the board;
(2) the commissioner;
(3) employees of the board; and
(4) any person who provides services to the board relating to the management or investment of the funds designated under Section 51.401.

(c) Not later than the 45th day before the date on which the board intends to adopt a proposed ethics policy or an amendment to or revision of an adopted ethics policy, the board shall submit a copy of the proposed policy, amendment, or revision to the Texas Ethics Commission and the state auditor for review and comments. The board shall consider any comments from the commission or state auditor before adopting the proposed policy.

(d) The provisions of the ethics policy that apply to a person who provides services to the board relating to the management or investment of the funds designated under Section 51.401 must be based on the Code of Ethics and the Standards of Professional Conduct prescribed by the Association for Investment Management and Research or other ethics standards adopted by another appropriate professionally recognized entity.

(e) The board shall ensure that applicable provisions of the ethics policy are included in any contract under which a person provides services to the board relating to the management and investment of the funds designated under Section 51.401.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.409. DISCLOSURE OF CONFLICTS OF INTEREST AND FINANCES. (a) A member of the board, the commissioner, an employee of the board, or a person who provides services to the board that relate to the management or investment of the funds designated under Section 51.401 who has a business, commercial, or other relationship that could reasonably be expected to diminish the person's independence of

judgment in the performance of the person's responsibilities relating to the management or investment of the funds shall disclose the relationship in writing to the board.

(b) The board or the board's designee shall, in the ethics policy adopted under Section 51.408, define the kinds of relationships that may create a possible conflict of interest.

(c) A person who is required to file a disclosure statement under Subsection (a) shall refrain from giving advice or making decisions about matters affected by the conflict of interest unless the board, after consultation with the general counsel of the board, expressly waives this prohibition. The board shall maintain a written record of each waiver and the reasons for it. The board may delegate the authority to waive prohibitions under this subsection to one or more designated employees of the land office on a vote of a majority of the members of the board at an open meeting called and held in compliance with Chapter 551, Government Code. The board shall have any order delegating authority to waive prohibitions under this section entered into the minutes of the meeting. The board may adopt criteria for designated employees to use to determine the kinds of relationships that do not constitute a material conflict of interest for purposes of this subsection.

(d) Each employee of the board who exercises significant decision-making or fiduciary authority, as determined by the board, shall file financial disclosure statements with a person designated by the board. The content of a financial disclosure statement must comply substantially with the requirements of Subchapter B, Chapter 572, Government Code. A statement must be filed not later than the 30th day after the date a person is employed in a significant decision-making or fiduciary position and annually after employment not later than April 30. The filing deadline may be postponed by the board for not more than 60 days on written request or for an additional period for good cause, as determined by the chairman of the board. The board shall maintain a financial disclosure statement for at least five years after the date of its filing.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.410. REPORTS OF EXPENDITURES. A consultant, advisor,

broker, or other person providing services to the board relating to the management and investment of the funds designated under Section 51.401 shall file with the board regularly, as determined by the board, a report that describes in detail any expenditure of more than $50 made by the person on behalf of:

(1) a member of the board;

(2) the commissioner; or

(3) an employee of the board.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.411. FORMS; PUBLIC INFORMATION. (a) The board shall prescribe forms for:

(1) statements of possible conflicts of interest and waivers of possible conflicts of interest under Section 51.409; and

(2) reports of expenditures under Section 51.410.

(b) A statement, waiver, or report described by Subsection (a) is public information.

(c) The board shall designate an employee of the board to act as custodian of statements, waivers, and reports described by Subsection (a) for purposes of public disclosure.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Sec. 51.412. REPORTS TO LEGISLATURE. (a) Not later than September 1 of each even-numbered year, the board shall submit to the legislature a report that, specifically and in detail, assesses the direct and indirect economic impact, as anticipated by the board, of the investment of funds designated under Section 51.401 for deposit in the real estate special fund account of the permanent school fund.

(b) The board may not disclose information under this section that is confidential under applicable state or federal law.

(c) The report must include the following information:

(1) the total amount of the funds designated by Section 51.401 for deposit in the real estate special fund account of the permanent school fund that the board intends to invest;

(2) the rate of return the board expects to attain on the

investment;

(3) the amount of the funds the board expects to distribute to the available school fund or the State Board of Education for investment in the permanent school fund after making the investments;

(4) the distribution of the board's investments by county;

(5) the effect of the board's investments on the level of employment, personal income, and capital investment in the state;

(6) the amounts of all fees or other compensation paid by the board to investment managers, consultants, or advisors appointed or organizations contracted with under Section 51.4021; and

(7) any other information the board considers necessary to include in the report.

Added by Acts 2005, 79th Leg., Ch. 1098 (H.B. 2217), Sec. 9, eff. June 18, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 7, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 10, eff. September 1, 2019.

Sec. 51.413. TRANSFERS FROM THE REAL ESTATE SPECIAL FUND ACCOUNT TO THE AVAILABLE SCHOOL FUND AND THE PERMANENT SCHOOL FUND. (a) The board may, by a resolution adopted at a regular meeting, release from the real estate special fund account funds previously designated under Section 51.401 or managed, used, or encumbered under Section 51.402 or Section 51.4021 to be deposited in the State Treasury to the credit of:

(1) the available school fund; or

(2) the State Board of Education for investment in the permanent school fund.

(b) The board shall adopt rules to establish the procedure that will be used by the board to determine the date a transfer will be made and the amount of the funds that will be transferred to the available school fund or to the State Board of Education for investment in the permanent school fund from the real estate special fund account as provided by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 1368 (H.B. 3699), Sec. 8, eff. June 15, 2007.

Amended by:
Acts 2015, 84th Leg., R.S., Ch. 735 (H.B. 1551), Sec. 1, eff. June 17, 2015.
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 11, eff. September 1, 2019.

Sec. 51.4131. REPORT ON ANTICIPATED TRANSFER OF FUNDS. Not later than September 1 of each even-numbered year, the board shall submit to the legislature, comptroller, State Board of Education, and Legislative Budget Board a report that, specifically and in detail, states the date a transfer will be made and the amount of the funds the board will transfer during the subsequent state fiscal biennium from the real estate special fund account of the permanent school fund established under Section 51.401 to the available school fund or the State Board of Education for investment in the permanent school fund.

Added by Acts 2015, 84th Leg., R.S., Ch. 735 (H.B. 1551), Sec. 2, eff. June 17, 2015.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 524 (S.B. 608), Sec. 12, eff. September 1, 2019.

Sec. 51.414. PERMANENT SCHOOL FUND LIQUID ACCOUNT. (a) The permanent school fund liquid account is established as an account in the permanent school fund in the State Treasury to be used by the board and the State Board of Education as provided by this section.

(b) Each quarter, the board shall hold a meeting and adopt a resolution to release from the real estate special fund account funds designated under Section 51.401 that are not being used for a purpose listed in Section 51.402(a) and are not required for the board's anticipated cash needs for the 90-day period following the date of the meeting, to be deposited to the credit of the permanent school fund liquid account in the State Treasury.

(c) The State Board of Education may invest funds in the permanent school fund liquid account. The investments may be made only in liquid assets, in the same manner that the permanent school fund is managed by the State Board of Education.

(d) Investment income and realized capital gains derived from funds in the permanent school fund liquid account shall be deposited in the State Treasury to the credit of the State Board of Education for investment in the permanent school fund. This subsection does not require a deposit if the market value of the assets held in the permanent school fund liquid account is below cost.

(e) The State Board of Education may use funds in the permanent school fund liquid account to pay for administrative costs associated with implementing this section, including costs associated with contracts for professional investment management, investment advisory services, or custodial services.

(f) The board shall provide to the State Board of Education in each quarterly report required by Section 32.068 the board's anticipated cash needs for the six-month period following the date of the report, to allow the State Board of Education to ensure that the board's cash needs may be met as provided by Subsection (g).

(g) Not later than the fifth business day after the date of a request of the board, the State Board of Education shall release from the permanent school fund liquid account funds to be deposited to the credit of the real estate special fund account in the State Treasury in an amount requested by the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 493 (H.B. 4388), Sec. 4, eff. September 1, 2019.

SUBCHAPTER J. GRANTS

Sec. 51.501. APPLICATION FOR GRANT. A lessee of real property owned by the permanent school fund and used for grazing or agricultural purposes may apply to the commissioner for a grant to construct a permanent improvement on the leased property.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.502. SOURCE OF GRANT MONEY. A grant under this subchapter shall be made from money collected for surface damages under Sections 52.297 and 53.155.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.503. APPRAISAL REQUIRED. (a) Before a grant is made under Section 51.501, an appraiser employed by the land office must appraise the effect of the improvement for which a grant is sought on the value of the permanent school fund property.

(b) If the appraiser finds that the improvement will increase the value of the real property in an amount at least equal to the amount the improvement will cost, the commissioner may authorize the disbursement of money to construct the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.504. EVIDENCE OF EXPENDITURE REQUIRED. The commissioner shall require each lessee who receives a grant to provide copies of receipts, vouchers, or other evidence of expenditures for the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.505. IMPROVEMENTS: REAL PROPERTY OF PERMANENT SCHOOL FUND. Any improvement constructed with money disbursed under this subchapter is the real property of the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.506. MAINTENANCE. As a condition for a grant under this subchapter, the commissioner shall require the grantee to agree in writing to maintain the improvement in a manner that will protect the best interest of the permanent school fund.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

Sec. 51.507. RULES. The commissioner shall adopt rules as necessary to administer this subchapter, including rules establishing a procedure for applying for a grant under Section 51.501 and for monitoring the maintenance of the improvement.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 31, eff. June 20, 2003.

CHAPTER 52. OIL AND GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 52.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the school land board.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. LEASE OF PUBLIC SCHOOL AND GULF LAND

Sec. 52.011. AREA SUBJECT TO LEASE. Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) all unsold surveyed and unsurveyed public school land; and

(4) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5245, ch. 965, Sec. 6, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(b), eff. Sept. 1, 2003.

Sec. 52.012. CONDITIONS FOR LEASE. Oil and gas shall only be leased together and shall be leased separately from other minerals.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.013. DETERMINATION OF LEASE PRICE AND DELAY RENTALS. The board shall determine the price at which areas under this subchapter shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.014. DATE FOR LEASE AND NOTICE. The date for opening bids to lease areas covered by this subchapter shall be set and notice of the date shall be given in the manner provided in Sections 32.105 and 32.107 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 16, eff. Sept. 1, 1993.

Sec. 52.015. BID TO LEASE. (a) To apply to lease a tract, a bidder must submit a separate bid for each separate tract to be leased.

(b) A bid must include a completed application to lease form, a payment to the commissioner in the amount of the actual bonus bid or set, and a separate payment to the commissioner in the amount of the special fee provided by Section 52.016 of this code.

(c) A bid must be delivered to the land office on or before the date and time the board advertises that the bids will be opened.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 17, eff. Sept. 1, 1993.

Sec. 52.016. SPECIAL FEE. Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 32.110 of this code.

Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 41, eff. Sept. 1, 1985.

Sec. 52.017. KEEPING AND OPENING BIDS. Bids shall be kept secure and unopened by the commissioner or the commissioner's designee until opened on the date and at the time set as provided in Section 52.014 of this code.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 18, eff. Sept. 1, 1993.

Sec. 52.018. VOID APPLICATION. An application that includes two or more areas or that is for a price that is less than the fixed royalty and price per acre is void.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.019. TIE BIDS. (a) If the highest bid for an area is made by more than one applicant, all applications shall be rejected and the board shall set a date for lease of the area that shall not be later than the 15th day of the following month.

(b) The area will be subject to lease in the same manner as it was originally subject to lease.

(c) No bids for a lease shall be considered if the price is less than the highest bid offered in the original application.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.020. RETURN OF PAYMENTS ON REJECTED APPLICATIONS. The comptroller or commissioner shall return all amounts paid on rejected applications.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 13, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 1423, Sec. 14.11, eff. Sept. 1, 1997.

Sec. 52.021. TERM OF LEASE. A lease granted under this subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5247, ch. 965, Sec. 9, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 19, eff. Sept. 1, 1993.

Sec. 52.022. ROYALTY RATE. The board shall set the royalty rate on production of oil and gas from land leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 20, eff. Sept. 1, 1993.

Sec. 52.023. LEASE PROVISIONS FOR DRILLING AND REWORKING. Each lease shall provide that:

(1) if the production of oil or gas on premises leased under this subchapter ceases for any reason after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the cessation of production;

(2) the lease shall remain in effect as long as drilling or reworking operations continue in good faith and in a workmanlike manner without interruptions totaling more than 60 days;

(3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect so long as oil or gas is produced from the leased premises in paying quantities or payment of shut-in royalties or payment of compensatory royalties is made as provided by law; and

(4) if the drilling or reworking operations result in the completion of a well as a dry hole, the lease will not terminate if the lessee commences additional drilling or reworking operations

within 60 days after the completion of the well as a dry hole, and the lease shall remain in effect so long as the lessee continues drilling or reworking operations in good faith and in a workmanlike manner without interruptions totaling more than 60 days.

Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 2005, ch. 785, Sec. 6, eff. June 13, 1979; Acts 1993, 73rd Leg., ch. 897, Sec. 21, eff. Sept. 1, 1993.

Sec. 52.024. LEASE PROVISIONS FOR SHUT-IN OIL OR GAS ROYALTY AND COMPENSATORY ROYALTY. (a) For purposes of this section, "well" means any well that has been assigned a well number by the state agency having jurisdiction over the production of oil and gas.

(b) Each lease shall provide that:

(1) if, at any time after the expiration of the primary term of a lease that, until being shut in, was being maintained in force and effect, a well capable of producing oil or gas in paying quantities is located on the leased premises but oil or gas is not being produced for lack of suitable production facilities or lack of a suitable market, then the lessee may pay as a shut-in oil or gas royalty an amount equal to double the annual rental provided in the lease but not less than $1,200 a year for each well capable of producing oil or gas in paying quantities. To be effective, each initial shut-in oil or gas royalty must be paid on or before: (A) the expiration of the primary term, (B) 60 days after the lessee ceases to produce oil or gas from the leased premises, or (C) 60 days after the lessee completes a drilling or reworking operation in accordance with the lease provisions, whichever date is latest;

(2) if the shut-in oil or gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month following the month in which production ceased, and, after that, if no suitable production facilities or suitable market for the oil or gas exists, the lessee may extend the lease for four more successive periods of one year by paying the same amount each year on or before the expiration of each shut-in year;

(3) if, during the period the lease is kept in effect by

payment of the shut-in oil or gas royalty, oil or gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same producing reservoir, or in any case in which drainage is occurring, the right to continue to maintain the lease by paying the shut-in oil or gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid. The lessee may maintain the lease for four more successive years by the lessee paying compensatory royalty at the royalty rate provided in the lease of the market value of production from the well causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;

(4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month following the month in which the oil or gas is produced from the well causing the drainage or that is completed in the same producing reservoir and located within 1,000 feet of the leased premises;

(5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in oil or gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and

(6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code; however, at the determination of the commissioner and with the commissioner's written approval, the payment of compensatory royalties shall satisfy the obligation to drill offset wells.

Acts 1977, 65th Leg., p. 2447, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 1858, ch. 438, Sec. 1, eff. June 11, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 18, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 22, eff. Sept. 1, 1993.

Sec. 52.026. LEASE TRANSFER. (a) A lessee of an area under this subchapter may transfer the lease at any time. The liability of the transferor to properly discharge its obligations under the lease, including properly plugging abandoned wells, removing platforms or pipelines, or remediation of contamination at drill sites shall pass

to the transferee upon prior written consent of the commissioner. The commissioner may not withhold the consent unreasonably. The commissioner may require the transferee to demonstrate that it has the financial responsibility to properly discharge its obligations under the lease and may require the transferee to post a bond or provide other security to secure those obligations if the transferee is unable to demonstrate such financial responsibility to the satisfaction of the commissioner.

(b) The transfer of the lease shall be recorded in any county in which all or part of the leased area is located.

(c) Within 90 days after the execution of the transfer, the recorded transfer or a certified copy of the recorded transfer accompanied by a filing fee set by the commissioner in an amount not less than $5 shall be filed in the land office.

(d) Every transferee shall succeed to all rights and be subject to all obligations, liabilities, and penalties owed to the state by the original lessee or any prior transferee of the lease, including any liabilities to the state for unpaid royalties.

(e) This section does not relieve a person from the duty to comply with a rule adopted or order issued by the Railroad Commission of Texas under another provision of this code.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(i), eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 19, eff. Sept. 1, 1987; Acts 1999, 76th Leg., ch. 1125, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1483, Sec. 2, eff. Aug. 30, 1999.

Sec. 52.027. LEASE RELINQUISHMENT. (a) A lessee may relinquish his lease to the state at any time by recording the relinquishment in each county in which all or part of the leased area is located.

(b) Within 90 days after the execution of the relinquishment, the recorded relinquishment or a certified copy of the recorded relinquishment together with a filing fee set by the commissioner in an amount not less than $5 shall be filed in the land office.

(c) After the lessee relinquishes the area, he is relieved of any further obligations to the state, but the relinquishment does not release the lessee from any obligations or liabilities previously

accrued in favor of the state.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 404, ch. 81, Sec. 21(j), eff. Sept. 1, 1983.

Sec. 52.028. SUSPENSION OF LEASE BECAUSE OF LITIGATION. (a) If an oil and gas lease that has been issued by the commissioner is involved in litigation relating to the validity of the lease or to the authority of the commissioner to issue the lease, the lease and all of the conditions and covenants contained in the lease shall be suspended during the period of the litigation, except as otherwise provided by this section.

(b) If the litigation is instituted during the primary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the primary term provided in the lease shall resume and the lease shall continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.

(c) If the litigation is instituted during the secondary term of the lease, then, after a final, nonappealable judgment is entered in the litigation, the lease and all the conditions and covenants contained in the lease shall be operative, and the lessee shall have 60 days from the date a final, nonappealable judgment is entered in the litigation to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.

(d) The lessee shall pay any royalties that accrue during the period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 20, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 23, eff. Sept. 1, 1993.

Sec. 52.029. FORFEITURE OF RIGHTS. The provisions of Subchapter F of this chapter governing the forfeiture and reinstatement of rights apply to forfeiture and reinstatement of leases issued under this subchapter, and on forfeiture of a lease,

the area covered by the lease may be leased, after advertisement, by any other person.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.030. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS. (a) If a lessee is prevented from exploring, developing, drilling, or producing oil and gas from the tract leased to him as a result of the action of any agency of the United States or of this state during the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation.

(b) A refund shall be made only on verification of the claim by the board or on the judgment of a court of competent jurisdiction.

(c) A lessee who has a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover the money paid.

Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.0301. SUSPENSION OF TERMS OF LEASE IN CERTAIN SITUATIONS. (a) If the lessee of a valid oil and gas lease granted by the state is unable to obtain access to the leased premises, or is unable to obtain in a timely manner a permit to drill on or produce from the leased premises by any duly constituted authority of the United States or of this state after a diligent, good faith attempt has been made by the lessee to obtain access to, or a permit to drill on or produce from, the leased premises, the lessee may file with the board an application describing and giving the date of the action that deprives the lessee of access to or a permit to drill on or produce from the leased premises.

(b) If the board is satisfied that the facts included in the application are true and that the lessee acted diligently and in good faith in an attempt to gain access to or the right to drill on or produce from the leased premises, the board may order the suspension of the lease or any condition or covenant contained in the lease from

the date the board determines to be the date the cause for the suspension began, except as otherwise provided by this section.

(c) The board may set as a condition to approving the application for a suspension of the lease any term or requirement that relates to the duration of the suspension, the administration of the property during the suspension, reporting requirements during the suspension, or another administrative matter that the board determines is in the best interest of the state.

(d) If the lease is suspended during its primary term, the lessee shall make payments in the amount of the annual delay rental stipulated in the lease by each anniversary date of the lease during the period of suspension. If the payments in the amount of the annual delay rental are not paid by each anniversary date of the lease, the lease shall not automatically terminate. However, the amount of the annual delay rental stipulated in the lease due by each anniversary date of the lease during the period of suspension continues to be an obligation and debt owed by the lessee. The lessee shall pay all royalties, if any, that accrue during the period of suspension of the lease in the same manner as they are to be paid under the terms of the lease.

(e) If the lease is suspended during its primary term, then, when the suspension ends, the primary term provided in the lease shall resume and continue to run for the remainder of the period specified in the lease, and all conditions and covenants contained in the lease shall be operative.

(f) If the lease is suspended during its secondary term, then, when the suspension ends, the lease and all of the conditions and covenants contained in the lease shall be operative, and the lessee shall have 60 days from the date the suspension ends to produce in paying quantities or to commence drilling or reworking operations on the lease as if production had ceased on that date under Section 52.023 of this code.

(g) This section may not be construed as abridging any rights or privileges conveyed under Chapter 287, Acts of the 47th Legislature, Regular Session, 1941 (Article 5366a, Vernon's Texas Civil Statutes).

Added by Acts 1979, 66th Leg., p. 2006, ch. 785, Sec. 7, eff. June 13, 1979. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 14, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 948, Sec. 21, eff. Sept. 1,

1987; Acts 1993, 73rd Leg., ch. 897, Sec. 24, eff. Sept. 1, 1993.

Sec. 52.031. EXTENSION OF LEASE BY COMMISSIONER. (a) At the expiration of the primary term of a lease made under the provisions of this subchapter, if production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted in good faith and in good and workmanlike manner, the lessee may file in the land office on or before the expiration of the primary term a written application to the commissioner for a 30-day extension of the lease accompanied by $3,000 for 640 acres or less or $6,000 for more than 640 acres.

(b) The commissioner shall extend the lease in writing for a 30-day period from the expiration of the primary term and as long after that time as oil or gas is produced in paying quantities.

(c) As long as drilling operations are being conducted, the lessee may submit an application and payment during any 30-day extended period for an additional extension of 30 days. On receiving the application and payment, the commissioner shall again extend the lease in writing so that it will remain effective for an additional 30-day period and as long after that time as oil or gas is produced in paying quantities.

(d) No lease may be extended under this section for more than 390 days after the expiration of the primary term unless production is obtained in paying quantities.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.032. REGULATION OF DEVELOPMENT AND OPERATIONS. (a) Development and operations on areas covered by this subchapter shall be done insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall adopt and enforce rules that may be necessary for the purposes stated in Subsection (a) of this section.

(c) Any rules and changes of rules adopted under this section shall be submitted to the attorney general for his written approval before the rules or their changes become effective.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.033. ACCESS TO LAND. (a) If it is necessary for the lessee to enter the enclosed land of another person for the purpose of ingress and egress to and from the area leased from the state and if the lessee and the owner cannot agree on the place or the conditions of entry and exit, the lessee or his agent may petition the commissioners court of the county in which all or part of the enclosure is located to open the places of ingress and egress that may be necessary.

(b) On filing the petition, the commissioners court shall delineate the roads necessary for the stated purpose in the manner provided for delineating third-class public roads.

Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.034. OFFSET WELLS. (a) If oil or gas is produced in commercial quantities from a well located on a privately owned area or areas of state land leased at a lesser royalty and the well is located within 1,000 feet of an area leased under this subchapter, or in any case where such an area is being drained by such a well or wells, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production from the draining well or the well located within 1,000 feet of the leased state area.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells required by Subsection (a) of this section. Such compensatory royalty shall be paid at the royalty rate provided by the state lease issued under

this subchapter and shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the leased state area.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 22, eff. Sept. 1, 1987.

Sec. 52.035. AGREEMENTS WITH U.S. GOVERNMENT. (a) The governor may execute agreements on behalf of the state to obtain access to confidential and proprietary information from the secretary of the United States Department of the Interior regarding exploration, development, or production of oil, gas, or other minerals on the outer continental shelf. The governor may agree to waive sovereign immunity and other defenses as prescribed by this section, and may agree to indemnify the United States government from unauthorized disclosure of the information obtained.

(b) The information obtained from the Department of the Interior under an agreement executed under Subsection (a) of this section is confidential and may not be used publicly, opened to public inspection, or disclosed, except that the information may be examined and used by the governor and the commissioner of the General Land Office, or their designees, for the administration of their official duties and to assure a fair and equitable division of federal revenues derived from leasing lands adjacent to the boundaries of this state.

(c) The state waives its right to claim sovereign immunity in any action commenced against the state for unauthorized disclosure of the confidential information obtained from the Department of the Interior under an agreement executed by the governor under Subsection (a) of this section, and waives its right to claim that an employee who revealed privileged information was acting outside the scope of employment by disclosing the information.

(d) The state agrees to hold the United States government harmless from any actions or damages brought as a result of the acts or omissions of the state or its employees in releasing proprietary information obtained under an agreement executed under Subsection (a) of this section.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 15, eff. Aug. 26, 1985.

Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 25, eff. Sept. 1, 1993.

SUBCHAPTER C. DEVELOPMENT OF RIVERBEDS AND CHANNELS

Sec. 52.071. AUTHORITY OVER RIVERBEDS AND CHANNELS. The riverbeds and channels belonging to the state are subject to development by the state and to lease or contract for recovery of oil and gas.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.072. STATE POLICY. (a) With regard to leases and contracts for the development of riverbeds and channels, it is the policy of the state that activities of the state and all lessees and contracting parties or their heirs, successors, or assigns under a lease or contract shall comply with laws of the state and rules and orders of any state agency that are applicable to development of oil and gas bearing land in the state by persons other than the state.

(b) Each lease and contract issued under the provisions of this subchapter is subject to the provisions of Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.073. AREA SUBJECT TO LEASE. Riverbeds and channels that belong to the state may be leased to any person by the board under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.074. SIZE OF TRACT. Subject to the conditions in this subchapter, riverbeds and channels shall be leased in tracts of the size determined by the board.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.076. DUTY TO ADVERTISE. (a) The board may:

(1) advertise for bids to lease riverbeds and channels for oil and gas development;

(2) advertise for bids to contract to develop the oil or gas under riverbeds and channels on consideration involving compensation with oil and gas or money so that the state will receive a portion of the oil and gas as it is produced or advanced royalties paid in money;

(3) advertise for bids to purchase oil and gas in place under riverbeds and channels without requiring mineral development; and

(4) pool or bring an action to force pool unleased riverbeds and channels.

(b) The board shall advertise that the board will receive bids and award the right to lease, develop, or purchase under this section in the same manner as provided in Subchapter D, Chapter 32, of this code and Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 16, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 26, eff. Sept. 1, 1993.

Sec. 52.077. SPECIAL FEE. Each bidder on a lease under this subchapter shall remit with each bid by separate payment a special sale fee in the amount and in the manner provided by Section 32.110 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 27, eff. Sept. 1, 1993.

Sec. 52.080. FORMS FOR LEASE AND CONTRACT. Leases and contracts for the development of riverbeds and channels shall be executed on forms approved by the board.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 17, eff. Aug. 26, 1985.

Sec. 52.082. TERM OF LEASE. A lease granted under this subchapter shall be for a primary term not to exceed 10 years and for as long after that time as oil or gas is produced from the leased area.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5248, ch. 965, Sec. 10, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 28, eff. Sept. 1, 1993.

Sec. 52.083. CONDITIONS OF LEASE. Oil and gas shall only be leased together and separately from other minerals.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.084. SPECIAL LEASE PROVISIONS. Each lease shall include the provisions required by Sections 52.023 and 52.024 of this code.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.085. PREVENTION OF POLLUTION. (a) Each lease and contract shall require the lessee or contracting party or his successors or assigns to use the highest degree of care and all proper safeguards to prevent pollution of streams.

(b) If the lessee or contracting party fails to meet the requirements in Subsection (a) of this section, the state is entitled to take charge of the property immediately and to cancel the lease.

Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.087. DETERMINATION OF LEASE PRICE AND DELAY RENTALS. The board shall determine the price at which riverbeds and channels shall be leased and the amount of delay rentals that shall be charged.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.088. ROYALTY RATE. The board shall set the royalty rate on production of oil and gas from riverbeds and channels leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the oil and gas produced.

Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 29, eff. Sept. 1, 1993.

Sec. 52.090. EXTENSION OF LEASE. A lease may be extended in the manner provided in Section 52.031 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.091. REFUND OF LEASE MONEY IN CERTAIN SITUATIONS. A lessee under this subchapter is entitled to a refund of all money paid for bonus, delay rentals, and other fees for the reasons and in the manner provided in Section 52.030 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.092. POWER OF EMINENT DOMAIN. The board or any person including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain to condemn land as provided in the general laws of this state for the purposes stated in

Section 52.093 of this code.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.093. EMINENT DOMAIN PURPOSES. The board and any person, including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain for the following purposes:

(1) to secure additional adjoining land that may be necessary to erect power machinery and to construct storage tanks and slush pits for the operation of the river or channel development and to prevent or lessen the dangers of pollution involved in the drilling of any well in the riverbed or channel; and

(2) to secure a right-of-way to and from any well that is drilled in the riverbed or channel so that the board or any of the leaseholders or contracting parties may go to and from the well and may transport any materials necessary to develop the riverbed or channel and to transport oil and gas away from the well.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.094. DRILLING OFFSET WELL ON CONDEMNED LAND. (a) If the landowner or other interested party and the board or the lessee of the riverbed or channel cannot agree on the amount of damages, if any, and it is necessary to commence condemnation proceedings and if it is necessary for the landowner or other interested party to drill an offset well within the area to be condemned, the mineral rights of the condemned party are superior to the surface rights of the condemning party.

(b) If there is any conflict surrounding the drilling of an offset well under a permit from the Railroad Commission of Texas, the condemning party is required to move any interference or hindrance or to go around any offset well, and if he fails or refuses to immediately move the interference or hindrance on demand, the owner of the mineral rights is entitled to do so immediately without liability.

Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.095. RIGHTS OF PARTIES TO CONDEMNATION. It is the intent of this subchapter that the mineral rights of the owner are superior to the surface rights of the condemning party.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.096. EXCLUSION FROM DAMAGES IN CONDEMNATION. In determining the damages resulting from condemnation, the commissioners or any other tribunal shall not consider the value of oil or gas located beneath the rights-of-way of the condemned property.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.097. INJUNCTION. (a) No injunction may be granted against the board, its agents, or persons with whom it has contracted, to restrain the board from enforcing its orders or contracts or from carrying out any development that has begun or was contemplated by the board until notice is given to the board and its agents or the contracting parties and a hearing is held.

(b) Before an injunction or restraining order is issued or becomes effective, the court shall require the complaining party to execute a bond payable to the governor with good and sufficient sureties authorized to do business in this state in an amount determined by the court to be sufficient to protect the state from loss from drainage of the riverbed or channel, of lease or bonus or consideration, or from any other reason. In determining the amount of the bond, the court shall consider the probable and possible loss to the state by granting the injunction.

(c) The attorney general shall bring suit on the bond to recover any loss to the state caused by the suit for injunction.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 52.098. APPEAL. (a) Either party to the suit for an injunction or restraining order is entitled to appeal from the final judgment.

(b) The appeal shall be returnable to the appellate court at once and shall have precedence in that court over all pending cases, proceedings, and causes of a different character.

(c) The court of appeals shall decide the questions involved in the appeal at as early a date as possible.

(d) If any question is certified to the supreme court or if writ of error is requested or granted, the supreme court shall set the cause for hearing immediately, and the cause shall have precedence over all other cases, proceedings, and causes of a different character. The supreme court shall decide the cause at as early a date as possible.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 799, ch. 291, Sec. 90, eff. Sept. 1, 1981.

Sec. 52.099. VENUE. The venue for any suit arising from this subchapter either by or against the board and regardless of the kind or nature shall be in Travis County.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.100. EFFECT OF SUBCHAPTER. The provisions of this subchapter do not repeal or supersede Chapter 138, Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), which validated, relinquished, quitclaimed, and granted to patentees and awardees and their assignees land and minerals that are included in surveys lying across or partly across watercourses and navigable streams in the state and that have been patented or awarded as provided in that chapter.

Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

SUBCHAPTER D. ROYALTIES

Sec. 52.131. PAYMENT OF ROYALTY GENERALLY. (a) Royalties due under a lease of state land or minerals that are required to be paid to the land office, including leases on land on which a free royalty is reserved pursuant to Section 51.201 or 51.054 of this title, shall be due and shall be paid as provided in this section.

(b) The commissioner shall by rule set the date for making royalty payments and for filing any reports, documents, or other records required to be filed by the commissioner. However, the commissioner may not set the due date for royalty on oil before the 5th day of the second month succeeding the month of production and may not set the due date for royalty on gas before the 15th day of the second month succeeding the month of production.

(c) Royalty payments shall be accompanied by:

(1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

(2) a copy of all documents, records, or reports required by the land office, confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

(3) a check stub, schedule, summary, or other remittance advice showing by the assigned land office lease number the amount of royalty being paid on each lease; and

(4) other reports or records that the land office may require to verify the gross production, disposition, and market value.

(d) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.

(e) If any royalty is not paid when due but is paid before the 31st day after the date on which it is due, a penalty of five percent of the royalty due shall be added to the unpaid amount due. If the royalty is not paid before the 31st day after the date on which it is due, a penalty of an additional five percent of the royalty due shall

be imposed. The minimum penalty under this section is $25. The penalty may not be imposed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the market value of the production.

(f) The commissioner shall add a penalty of 25 percent to any delinquent royalty if a part of the delinquency is due to fraud or an intent to evade the provisions of this chapter.

(g) The annual interest rate on delinquent royalties is 12 percent. Interest accrues on delinquent royalties beginning 60 days after the date on which the royalty is due.

(h) If any report, affidavit, supporting document, or any other instrument required to be filed under this chapter is not filed when due, the commissioner shall charge a reasonable penalty in an amount established by rule adopted by the commissioner.

(i) Interest charged under Subsection (g) of this section or penalties under Subsection (e), (f), or (h) of this section are in addition to any other right, including forfeiture, that the commissioner may exercise for failure to submit a report or other instrument.

(j) By rule, the board may provide procedures and standards for reduction of interest charged or penalties assessed under this section or any other interest or penalties assessed by the commissioner relating to unpaid or delinquent royalties.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 42, 43, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 948, Sec. 23, 24, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 30, eff. Sept. 1, 1993.

Sec. 52.132. FORM OF PAYMENT. Except as provided in Section 52.133 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the commissioner in Austin.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.133. PAYMENT OF ROYALTY IN KIND. (a) Each oil or gas lease covering land leased by the board, by a board for lease, or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be subject to approval by the commissioner before it is effective, shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.

(b) The option to take the royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease.

(c) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on the behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease, or at the direction of the Board for Lease of University Lands, may negotiate and execute contracts or any other instruments or agreements necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, marketing, purchase, transportation, including purchase and exchange agreements necessary to transport gas, and storage and including insurance contracts or other agreements, to secure or guarantee payment.

(d) The commissioner, the owner of the soil under Subchapter F, or the commissioner acting on behalf of and at the direction of an owner of the soil under Subchapter F, the board, or a board for lease may negotiate and execute contracts or any other instruments or agreements necessary to convert that portion of the royalty taken in kind into other forms of energy, other than electricity.

(e) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the market value of the production from state public land or land under the provisions of Subchapter F of this chapter.

(f) For the purposes of this section, royalty taken in kind includes oil or gas sold or marketed by the commissioner that has been produced on state mineral lands or from the first three miles of federal waters adjacent to the state boundaries, also known as the 8g zone.

Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 31, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 427, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 405, Sec. 49, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 1, eff. May 17, 2019.

Sec. 52.134. FILING CONTRACTS AND AGREEMENTS. Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.135. INSPECTIONS AND EXAMINATIONS. (a) The books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of the oil and gas are subject at any time to inspection and examination by the commissioner and the attorney general and governor or their representatives.

(a-1) Not later than the 60th day after the date of receipt of a request from the commissioner, the attorney general, or the governor for information described by Subsection (a), a lessee shall produce the requested information.

(a-2) A lessee who is unable to produce requested information in the time required by Subsection (a-1) must, not later than the 30th day after the date of receipt of a request for the information, reply in writing to the requestor and state the reason for the inability to provide the information in the time required and when the information will be available. A requestor who receives a reply under this subsection may extend the deadline for the production of the requested information by written response to the lessee. If the

requestor does not extend the deadline, the lessee shall produce the information not later than the later of:

(1) the fifth day after the date of receipt of a written response from the requestor rejecting the extension; or

(2) the 60th day after the date of receipt of the original request.

(a-3) A lessee who withholds requested information on a good faith legal basis must, not later than the 60th day after the date of receipt of a request for the information, provide the requestor with a detailed explanation of the basis for withholding the information.

(b) If, after inspection and examination of books, accounts, reports, or other records, the commissioner or his representative determines that additional royalties are due under a lease of state land or minerals, the commissioner shall send to the lessee by certified mail, return receipt requested, an audit billing notice notifying the lessee of such additional royalties, and interest and penalty, due and of the reasons for such determination.

(c) A lessee shall have 30 days from the date of the receipt of an audit billing notice under Subsection (b) or a notice of a penalty assessment under Subsection (e) in which to pay the audit deficiency assessment or penalty or to request a hearing before the commissioner or the commissioner's representative for redetermination of the assessment or to challenge the assessment of the penalty. A statement of grounds setting out in detail the lessee's reasons for disagreement with the assessment or penalty and the factual and legal grounds on which the claim is based must be submitted by a lessee with its request for a hearing. The hearing shall be conducted in accordance with the rules and procedures established by the commissioner.

(d) In order to stop the further accrual of penalty or interest, the lessee may pay the additional royalties assessed at any time after receipt of an audit billing notice.

(e) Except as provided by Subsection (f), the commissioner may assess an administrative penalty against a lessee who fails to produce requested information in the time required under Subsection (a-1) or (a-2) by intentionally withholding information to which the land office is legally entitled. The penalty may not exceed:

(1) $100 a day for each day after the deadline for producing the information that the lessee fails to produce the information until the 60th day after the deadline; and

(2) $1,000 a day for each day after the 60th day after the deadline for producing the information that the lessee fails to produce the information.

(f) The commissioner may not assess a penalty against a lessee who withholds information under Subsection (a-3) until the commissioner determines that the requestor is entitled to the information.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1986, 69th Leg., 3rd C.S., ch. 5, Sec. 1, eff. Sept. 30, 1986.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 361 (H.B. 2571), Sec. 1, eff. September 1, 2013.

Sec. 52.136. LIEN. (a) The state has a statutory first lien on all oil and gas produced on any lease area to secure payment of unpaid royalty and other amounts due.

(b) By acceptance of a lease, the lessee grants to the state an express contractual lien on and security interest in all oil and gas in and extracted from the area covered by the lease, all proceeds which may accrue to the lessee from the sale of the oil and gas, whether the proceeds are held by the lessee or another person, and all fixtures on and improvements to the area covered by the lease used in connection with the production or processing of the oil and gas, to secure the payment of royalties and other amounts due or to become due under the lease or this subchapter and to secure payment of damages or loss that the state may suffer by reason of the lessee's breach of a covenant or condition of the lease, whether express or implied.

(c) The statutory and contractual liens and security interests described in this section may be foreclosed with or without court proceedings in the manner provided under Chapter 9, Business & Commerce Code. The state may require the lessee to execute and record instruments reasonably necessary to acknowledge, attach, or perfect the liens.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1324, Sec. 2, eff. Jan. 1, 1998.

Sec. 52.137. SUIT AFTER PROTEST. (a) If a lessee, who has received an audit deficiency assessment and has waived the right to request a hearing before the commissioner or who is required by final order of the commissioner following a hearing to pay additional royalties, contends that such audit deficiency assessment is unlawful or that the commissioner may not legally demand or collect such royalties, and the lessee intends to bring suit under this section, the lessee must submit a protest in writing stating fully and in detail each reason why it contends such royalty is not due. Such protest shall be made to the commissioner within 30 days of the date of receipt of the audit billing notice or of the date of receipt of the final order of the commissioner following a hearing, as the case may be. All such mailings shall be by certified mail, return receipt requested.

(b) Repealed by Acts 2015, 84th Leg., R.S., Ch. 3 , Sec. 10(2), eff. September 1, 2015.

(c) A suit under this section is barred unless brought in the district courts of Travis County within 90 days after the date of the protest or within 90 days after the date of the final order of the commissioner following hearing, whichever is later.

(d) The issues to be determined in a suit under this section are limited to those arising from the reasons stated in the written protest as originally filed.

(e) The trial of the issues in a suit under this section is de novo and the substantial evidence rule will not apply.

Added by Acts 1986, 69th Leg., 3rd C.S., ch. 5, Sec. 2, eff. Sept. 30, 1986. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 25, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 1423, Sec. 14.13, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 328, Sec. 7.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 10(2), eff. September 1, 2015.

Sec. 52.139. LIMITATIONS ON AUDIT ASSESSMENTS. (a) If an audit billing notice has been issued under Section 52.135 and any outstanding audit deficiency assessment has been paid either:

(1) voluntarily;

(2) after a hearing was requested and the commissioner has entered a final non-appealable order concerning the assessment; or

(3) after a final non-appealable judgment has been rendered by a court after filing of a suit under Section 52.137, then the commissioner may not issue another deficiency assessment which covers the same issues, time periods, and leases as those covered by the previous assessment.

(b) If the commissioner audits a lessee's books and records under Section 52.135 of this code the commissioner shall notify the lessee upon completion of his findings. If the commissioner notifies the lessee that no additional royalties are due, the commissioner may not again audit the books and records covering the same issues, time periods, and leases involved in the first audit.

(c) This section shall not preclude the commissioner from conducting subsequent audits or examinations covering the same issues, time periods, and leases in cases where fraud exists or where the first audit deficiency assessment results only from an examination of documents, records, or reports submitted to the commissioner and not from a complete audit of the books, accounts, reports, or other records of a lessee.

Added by Acts 1987, 70th Leg., ch. 948, Sec. 26, eff. Sept. 1, 1987.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 3 (S.B. 903), Sec. 9, eff. September 1, 2015.

Sec. 52.140. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records, as provided in Section 52.135 of this code, is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information set forth in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential in this section shall not

be subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding in which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by the provisions of this section and contracts made confidential by Section 52.134 of this code to enforce any provisions of this chapter or may authorize their use in judicial or administrative proceedings in which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information which is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 52.135 of this code or the release of other information which would have been properly included in reports required under Section 52.131 of this code.

Added by Acts 1987, 70th Leg., ch. 948, Sec. 27, eff. Sept. 1, 1987.

SUBCHAPTER E. UNITIZATION OF LEASED AREAS

Sec. 52.151. AUTHORIZATION TO OPERATE AREAS AS UNITS. (a) The commissioner, on behalf of the state or any fund that belongs to the state, may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil or gas or both and to commit to the agreements:

(1) the royalty interests in oil, gas, or both oil and gas, reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

(b) Before executing an agreement authorized by Subsection (a)

of this section, the commissioner must find that the agreement is in the best interest of the state.

Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 28, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 32, eff. Sept. 1, 1993.

Sec. 52.152. APPROVAL OF AGREEMENTS. (a) An agreement must be approved by the board and executed by the commissioner to be effective if the agreement commits:

(1) a royalty interest in land belonging to the permanent school fund or the asylum funds, in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea; or

(2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

(b) An owner of the soil who is subject to Subchapter F of this chapter may grant to a lessee prior authority to pool or unitize the interest of the owner in a lease executed under that subchapter. For the provisions of an agreement to bind the interest of an owner of the soil who is subject to Subchapter F of this chapter and who has not granted the lessee prior authorization to pool or unitize the owner's interest in an oil and gas lease executed under that subchapter, the agreement must be executed by the owner of the soil.

(c) An agreement that commits any interest in any land not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 29, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 33, eff. Sept. 1, 1993.

Sec. 52.153. PROVISIONS OF AGREEMENT. (a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct

of the operations on each tract in the unit;

(2) that production allocated by the agreement to each tract included in the unit when produced shall be considered for all purposes to have been production from the tract;

(3) that the interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit that is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect as long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and conditions of the lease.

(b) The agreement may include any other terms and conditions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land for oil and gas may consider to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 34, eff. Sept. 1, 1993.

Sec. 52.154. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve, by rule or order, a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land belonging to the permanent school fund or the asylum funds.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) A ratification or other agreement that commits any of the interests listed in Subsection (a) of this section in land not belonging to the permanent school fund or the asylum funds must be approved by the board, official, agent, agency, or authority of the state that has the authority to lease or to approve the lease of the land for oil and gas and must be executed by the commissioner to be effective.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 35, eff. Sept. 1, 1993.

SUBCHAPTER F. RELINQUISHMENT

Sec. 52.171. SCHOOL AND ASYLUM LANDS. The state hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.172. SALE AND LEASE BY AGENT. The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for a delay rental during the primary term of less than 10 cents per acre per year plus royalty, and in case of production, the lessee or purchaser shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 44, eff. Sept. 1, 1985.

Sec. 52.173. OFFSET WELLS. (a) If oil and/or gas should be produced in commercial quantities within 1,000 feet of land subject to this subchapter, or in any case where land subject to this subchapter is being drained by production of oil or gas the owner, lessee, sublessee, receiver, or other agent in control of land subject to this subchapter shall in good faith begin the drilling of

a well or wells upon such state land within 100 days after the draining well or wells or the well or wells completed within 1,000 feet of the state land commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably develop the state land and to protect such state land against drainage.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state land.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

(d) At the determination of the commissioner and with his written approval, the payment of a compensatory royalty shall satisfy the obligation to drill an offset well or wells. Such compensatory royalty shall be paid at a royalty rate established by the commissioner if the land is unleased, or at the royalty rate provided by the state lease, if the land is leased. Such compensatory royalty shall be paid on the market value at the well of production from the draining well or the well located within 1,000 feet of the state land.

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 30, eff. Sept. 1, 1987.

Sec. 52.174. FAILURE TO DRILL OFFSET. If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the

records of said office. Upon proper showing by the owner of the forfeited lease within 30 days after the declaration of forfeiture, the lease may, at the discretion of the commissioner and upon the terms of this subchapter and such other terms as he may prescribe, be reinstated. If such lease be not reinstated within such time, or if the commissioner finds that any unleased land included in this law is being drained, the commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within 100 days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the county clerk of the county wherein the land is situated. The rights of any owner of the soil which may have ipso facto terminated under prior laws shall be reinstated and are hereby reinstated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein reinstated shall be subject to the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.175. LEASE OF OIL AND GAS AFTER FORFEITURE. When the relinquishment or agency right herein granted has been forfeited, the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to the oil and gas lease. No oil and gas lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund. The owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section. Upon the termination or

expiration of a lease so executed by the Commissioner of the General Land Office, the rights of the surface owner to act under this law shall be ipso facto reinstated.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 1, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 36, eff. Sept. 1, 1993.

Sec. 52.176. FORFEITURE OF RIGHTS. If any person, firm, or corporation operating under this law shall fail or refuse to make the payment of any sum within 30 days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the land office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.177. RIGHTS OF SUBSEQUENT PURCHASER. If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil

and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the state. A relinquishment to the state of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.

Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.178. OPERATION UNDER PERMIT. The owner of a permit or combination of permits shall have 18 months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.179. LEASE UNDER PERMIT. If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the commissioner within 30 days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the

application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager, or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed 10 years, subject to renewal or renewals.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.180. PAYMENTS UNDER PERMIT. The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the state 10 cents per acre, annually in advance, for the second and third years, and shall likewise pay the owner of the soil 10 cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said commissioner shall forfeit the same by an endorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of 10 cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the land office relating to such permits.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.181. RELINQUISHMENT UNDER PERMIT. The owner of a permit or combination of permits may relinquish to the state a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or

part thereof is situated, and by filing it in the land office within 60 days after its execution, with a filing fee set by the commissioner in an amount not less than $1.

Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(k), eff. Sept. 1, 1983.

Sec. 52.182. DAMAGES TO SOIL. The payment of delay rentals and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 18, eff. Aug. 26, 1985.

Sec. 52.183. EFFECTIVE DATE OF LEASE. No mineral lease executed by the owner of the land or minerals under this subchapter is effective until a certified copy of the lease is filed in the land office.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.184. STATEMENT OF CONSIDERATION. No lease executed under this subchapter after September 17, 1939, is binding on the state unless it recites the actual and true consideration paid or promised.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.185. UNIVERSITY LAND. The provisions of this subchapter relating to a combination of permits and extension of time for beginning development and time for development applies to permits on university land.

Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 52.186. LEASE OF CERTAIN MINERALS WHEN OWNER OF THE SOIL UNAVAILABLE. (a) If an owner of the soil or of any undivided interest therein of any land subject to the terms of this subchapter or Subchapter C, Chapter 53, of this code is found to be unavailable under Subsection (b) of this section to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, such land or undivided interest therein shall be subject to lease for the applicable minerals under the procedure provided by Subchapter B of this chapter for the leasing of unsold surveyed public school lands. The substantive provisions of Subchapter B of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under this subchapter. The substantive provisions of Subchapter E, Chapter 53, of this code and Subchapters D and E, Chapter 32, of this code shall apply to a lease of land subject to lease under Subchapter C, Chapter 53, of this code. Subject to the provisions of Subsection (b)(4) of this section, the owner of the soil shall not be entitled to any revenue generated by a lease executed pursuant to this section.

(b) An owner of the soil or of an undivided interest therein may be found to be unavailable to act as the state's agent for leasing oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code, if the following conditions have been satisfied:

(1) Any party who has been unable to locate an owner of any interest, including an undivided interest, in the surface of land subject to this subchapter or Subchapter C, Chapter 53, of this code must submit a written affidavit to the commissioner stating that the party (hereafter called affiant) has been unable to locate said owner. This affidavit must specify the legal description of the land which the affiant has been unable to lease and the extent of the interest and type of mineral which the affiant has been unable to lease. In the affidavit, the affiant must also attest to the fact that he diligently searched the county clerk's records and the tax assessor's records to determine the name, identity, and last known place of residence of the owner of the soil who could lease the interest that the affiant has been unable to lease. The affiant must

further attest to the results of his search of such records and to any other steps taken to locate the owner of the soil.

(2) The commissioner shall provide notice to any owner of the soil identified by the affiant in Subdivision (1) of this subsection of the consequences of a finding that such owner of the soil is unavailable to act as the state's leasing agent. Such notice shall be in writing to the owner of the soil's last known address and shall also be provided by publication in the manner provided by the Texas Rules of Civil Procedure for citation by publication in actions against unknown owners or claimants of an interest in land.

(3) If the owner of the soil has not contacted the commissioner within 30 days after the completion of all notice procedures provided under Subdivision (2) of this subsection, then the owner of the soil will be deemed unavailable to act as the state's leasing agent and the School Land Board may lease the state's mineral interest under Subsection (a) of this section. However, if prior to the execution of a lease under Subsection (a) the owner of the soil notifies the commissioner in writing that he can and will act as the state's agent, then the owner of the soil's ability to act as a leasing agent under this subchapter or under Subchapter C, Chapter 53, of this code shall be reinstated.

(4) If the owner of the soil or of any undivided interest therein appears within two years after the execution of a lease on his land pursuant to this section, he shall be entitled to one-half of all royalties theretofore paid or thereafter to be paid under such lease, reduced in the proportion which his interest bears to the whole and undivided surface estate, upon showing to the satisfaction of the commissioner that the information submitted under Subsection (b)(1) was inaccurate or that a reasonably diligent search would have resulted in his being located.

(c) Upon the termination or expiration of a lease for oil and gas or any mineral leased under Subchapter C, Chapter 53, of this code executed pursuant to this section, the rights of the owner of the soil to act under this subchapter shall be ipso facto reinstated.

Added by Acts 1979, 66th Leg., p. 860, ch. 384, Sec. 1, eff. June 6, 1979. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 2, eff. Aug. 31, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 37, eff. Sept. 1, 1993.

Sec. 52.188. ASSIGNMENTS TO THE OWNER OF THE SOIL. (a) An owner of the soil may acquire by assignment a lease which he executed on land subject to the Relinquishment Act, Subchapter F, Chapter 52 of this code; however, such an assignment is subject to the terms of this section.

(b) When an owner of the soil seeks an assignment under Subsection (a) of this section, both the current lessee and the owner of the soil should notify the General Land Office of the proposed assignment. This notification must include proof of the consideration to be paid for the assignment. The land commissioner may then approve the assignment; if the commissioner does approve it, then both the current lessee and the owner of the soil will receive written notice of this approval. Such written approval shall also become part of the General Land Office's mineral file on this land.

(c) A lease which has been assigned to an owner of the soil without the advance approval of the land commissioner is void as of the time of assignment. In addition, the land commissioner may also forfeit the agency powers of the owner of the soil, and the state will execute a subsequent lease pursuant to Section 52.175 of this code.

(d) Whenever an owner of the soil is assigned a Relinquishment Act lease that he executed, he shall be accountable to the state as follows:

(1) If the lease was assigned to the owner of the soil without the advance approval of the commissioner and the owner of the soil subsequently assigns the lease, the owner of the soil must pay the state two times the entire consideration that he received upon subsequent assignment of the lease. Payment of this money in no way alters the fact that the lease is void under Subsection (c) of this section.

(2) When an assignment to an owner of the soil has the commissioner's advance approval and the owner of the soil subsequently assigns the lease, the owner of the soil must pay the state one-half of his profit on the subsequent assignment. His profit is the difference between what he paid for his assignment and what he received for the subsequent assignment.

(e) Under this section, an assignment will be treated as if it were made to the owner of the soil when:

(1) the assignee is a nominee of the owner of the soil;

(2) the assignee is a corporation or subsidiary in which the owner of the soil is a principal stockholder or is an employee of such a corporation or subsidiary;

(3) the assignee is a partnership in which the owner of the soil is a partner or is an employee of such a partnership;

(4) the assignee is a principal stockholder or employee of the corporation which is the owner of the soil;

(5) the assignee is a partner or employee in a partnership which is the owner of the soil;

(6) the assignee is a fiduciary for the owner of the soil, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator for the owner of the soil; or

(7) the assignee is a family member of the owner of the soil or related to the owner of the soil by marriage, blood, or adoption.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 45, eff. Sept. 1, 1985. Renumbered from Sec. 52.187 and amended by Acts 1987, 70th Leg., ch. 912, Sec. 3, eff. Aug. 31, 1987.

Sec. 52.189. AUTHORITY AND DUTIES OF AGENT. (a) Prohibition Against Self-Dealing. (1) The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner or to an employee of such a partnership. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator.

(2) Except as provided by this section, the owner of the soil may not lease, directly or indirectly, to a person related to him within and including the second degree of consanguinity or affinity, including a person related by adoption, or to a corporation

or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership.

(3) An owner of the soil who wishes to lease to a person, corporation, or partnership described in Subdivision (2) may request the approval of the board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease so approved by the board that will not be shared with the permanent school fund in the proportion prescribed by this subchapter.

(4) If an owner of the soil makes any material misstatement of fact in connection with an application to the board or affidavit made pursuant to Subdivision (3), then any lease executed pursuant to the authority of the board shall be voidable at the election of the commissioner. The election to void such a lease shall be cumulative of and in addition to all other remedies available to the commissioner or the state.

(b) Fiduciary Duty of Agent. An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith. An owner of the soil must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil. In addition to these specific statutory duties, the owner of the soil owes the state all the common-law duties of a holder of executive rights.

(c) When the commissioner determines that an owner of the soil has breached any duty or obligation under this subchapter, the commissioner may request that the attorney general file an action or proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the then applicable agency rights of the surface owner. Such an action or proceeding shall be filed in a district court in Travis County.

(d) A penalty of 10 percent shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this subsection. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be

offset by the 10 percent penalty imposed by this subsection.

Added by Acts 1985, 69th Leg., ch. 652, Sec. 1, eff. June 14, 1985. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 6, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 948, Sec. 31, eff. Sept. 1, 1987. Renumbered from Sec. 52.187 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(31), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 937, Sec. 2, eff. Sept. 1, 1995.

Sec. 52.190. LEASE BY OWNER OF THE SOIL. (a) An owner of the soil of lands covered by this subchapter may lease those lands for the purpose of exploring for and producing oil and gas in the manner provided by this section.

(b) An owner of the soil may apply in writing to the board for an oil and gas lease.

(c) The application shall contain the following:

(1) the name and address of the applicant;

(2) a complete legal description of the land the applicant seeks to lease;

(3) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;

(4) a brief letter opinion signed by an attorney licensed in this state setting out the surface ownership of the land sought to be leased;

(5) a statement of the applicant's experience in oil and gas exploration and production, including, without limitation, the applicant's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;

(6) a statement that the applicant intends to explore for and, if commercially reasonable, produce oil and gas or if the applicant plans that another person or firm shall conduct exploration and production:

(A) the name and address of the person or firm;

(B) a description of the person's or firm's experience in oil and gas exploration and production, including, without

limitation, the person's or firm's Railroad Commission of Texas operator number and a list of any State of Texas or federal oil and gas leases held or operated by the person or firm during the five-year period preceding the date of the application; and

(C) a description of the applicant's intended degree and type of participation in the exploration of and production from the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and

(7) the amount of bonus, rental, royalty, and other lease terms that the applicant proposes to pay or offer or pay and offer for the lease.

(d) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to mineral exploration on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552, Government Code. If a lease is not issued, the data shall be returned to the applicant.

(e) The board may prescribe the form of the application, specify information required to be submitted in support of an application, and, by rule, otherwise provide for the implementation of this section.

(f) The staff of the land office shall review the information presented in the application, other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

(1) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and

(2) any factual data considered by the staff to be relevant, including, but not limited to, data concerning the land

proposed to be leased and its estimated value for oil and gas exploration and production, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for oil and gas.

(g) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed, or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.

(h) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the board under Section 32.1071.

(i) The commissioner may not deliver a lease issued under this section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this subchapter. The waiver and the lease shall be effective as of the date the commissioner executes the lease.

(j) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

(k) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under Section 52.189. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or

other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

(l) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

Added by Acts 1995, 74th Leg., ch. 937, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER H. LEASE LIMITATIONS

Sec. 52.291. COVERAGE. The following persons, agencies, and entities are subject to the provisions of Sections 52.292 through 52.293 of this code:

(1) the commissioner;

(2) the board;

(3) boards for lease of land owned by a department, board, or agency of the state created by Chapter 34 of this code;

(4) the Board for Lease of University Lands;

(5) the Board of Regents of Texas A&M University;

(6) the Board of Regents of Texas Tech University;

(7) the Board of Regents of the Texas State University System;

(8) the Board of Regents of the University of Houston;

(9) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil and gas leases on land owned by the institution;

(10) an owner of land or minerals in this state whose authority to lease the land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment

Act, codified in Subchapter F of this chapter;

(11) the Board for Lease of State Park Lands;

(12) the Board for Lease of the Texas Department of Criminal Justice; and

(13) the commissioners court of any county in this state.

Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 227, Sec. 6, eff. May 23, 1997.

Sec. 52.297. COMPENSATION FOR DAMAGES FROM USE OF SURFACE. (a) Leases issued under Subchapter B of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring the compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or construction of permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) The compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 46, eff. Sept. 1, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 42, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, Sec. 8, eff. Jan. 1, 2004.

SUBCHAPTER I. GEOPHYSICAL AND GEOCHEMICAL EXPLORATION PERMIT

Sec. 52.321. DEFINITIONS. In this subchapter:

(1) "Geophysical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electrical techniques.

(2) "Geochemical exploration" means a survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

(3) "Public school land" means land dedicated by the constitution or laws of this state to the permanent free school fund, and specifically includes land with a mineral classification under Subchapter F of this chapter in which the state has retained the oil and gas interest and areas within tidewater limits.

(4) "Areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

(5) "Permit" means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(6) "Permittee" means the holder of a permit.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 43, eff. Sept. 1, 1993.

Sec. 52.322. PERMIT REQUIRED FOR EXPLORATION. (a) Except for a person who has a valid oil and gas lease on public school land authorized by this chapter, a person may not conduct geophysical or geochemical exploration on public school land unless the person obtains a permit from the commissioner.

(b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the

commissioner's rules relating to such exploration. Any person with a valid oil and gas lease on land subject to this chapter must comply with the commissioner's rules concerning exploration.

(c) Nothing in this title shall prohibit the conduct of airborne geophysical exploration.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985.

Sec. 52.323. APPLICATION FOR PERMIT. (a) The person responsible for conducting a geophysical or geochemical exploration is the person who must apply for a permit.

(b) An application for a permit shall be made on a form prescribed by the commissioner and shall state the name and address of each person for whom the exploration is being conducted as well as any other information required by the commissioner.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981.

Sec. 52.324. AUTHORITY OF COMMISSIONER. (a) The commissioner:

(1) as a condition of issuing a permit, shall collect reasonable fees from the applicant in an amount determined by the commissioner;

(2) may require a permittee to furnish to the commissioner, upon the commissioner's request, copies of maps, plats, reports, data, and any other information in the possession of the permittee that relates to the progress or results of an exploration under a permit; provided however, the commissioner shall not require a permittee to furnish any of its interpretive data;

(3) shall by rule require a permittee to restore land explored under the permit as nearly as is practicable to its condition immediately prior to the exploration;

(4) shall by rule determine the procedure for receiving compensation for damages to the surface of public school land except land with a mineral classification under Subchapter F of this chapter; and

(5) may make any other rules relating to geophysical or

geochemical explorations, permits, or permittees the commissioner considers appropriate.

(b) Money collected for surface damages shall be deposited and used in the manner provided by Section 52.297 of this chapter.

(c) In the case of areas within tidewater limits, the commissioner shall follow the recommendations of the Parks and Wildlife Department in making rules to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(d) If a permittee violates a rule of the commissioner or a term of a permit, the commissioner may cancel the permit.

(e) If by authority of Subsection (a)(2) of this section the commissioner acquires information concerning a permittee's geophysical or geochemical exploration, the commissioner shall consider the information to be confidential and may not disclose it, except by authority of a court order, to the public or any other agency of this state.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 47, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 44, eff. Sept. 1, 1993.

Sec. 52.325. PERMITTEE'S FAILURE TO COMPLY. (a) If a permittee fails to restore land in accordance with Section 52.324(a)(3) of this code and the rules of the commissioner, the commissioner and any surface lessee may maintain an action against the permittee for actual damages to the land, or to the improvements, growing crops, or domesticated animals on the land that were caused by the geophysical or geochemical exploration.

(b) If a permittee violates this subchapter, the provisions of a permit issued by authority of this subchapter, or a rule of the commissioner, the permittee commits an offense. An offense under this subsection is a misdemeanor punishable by a fine of not less than $100 nor more than $1,000. Each day that a violation occurs is a separate offense.

Added by Acts 1981, 67th Leg., p. 2451, ch. 631, Sec. 1, eff. Sept. 1, 1981.

CHAPTER 53. MINERALS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Board" means the School Land Board.

(4) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed. The term does not include in situ mining activities.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 45, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1483, Sec. 3, eff. Aug. 30, 1999.

SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

Sec. 53.011. LAND SUBJECT TO PROSPECT. Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for those minerals which are not subject to lease or permit under any other statute. A person may not prospect from a location within 2,500 feet of a military base, but prospectors may, from a location more than 2,500 feet from a base, look for minerals within the 2,500-foot strip.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 912, Sec. 4, eff. Aug. 31, 1987; Acts 1987, 70th Leg., ch. 1061, Sec. 4, eff. Aug. 31, 1987; Acts 2003, 78th Leg., ch. 149, Sec. 14, eff. May 27, 2003.

Sec. 53.012. APPLICATION FOR RIGHT TO PROSPECT. (a) A person who desires to prospect land covered by this subchapter shall file an application with the commissioner designating the area to be prospected.

(b) Each area covered by an application may not be in excess of 640 acres with a 10 percent tolerance for tracts, sections, and surveys that include more than 640 acres.

(c) The commissioner may determine the contents of an application.

Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 46, eff. Sept. 1, 1993.

Sec. 53.013. CONDITIONS OF PERMIT. (a) The commissioner may issue to the first applicant a permit to prospect the area designated in the applicant's application for a period up to one year from the date the application is filed. If the commissioner elects to grant the application for a permit to prospect under the provisions of this subchapter, the permit shall not be issued until after the land office receives the rental payment set by the commissioner.

(b) After receipt of an additional rental payment set by the commissioner, the commissioner may extend the permit for a period of one year.

(c) No permit may be extended for a period of more than five consecutive years from the date of its issuance.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 923, Sec. 19, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 897, Sec. 47, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 354, Sec. 4, eff. Aug. 28, 1995.

Sec. 53.015. APPLICATION FOR LEASE. (a) At any time during the term of the permit, the permittee may file an application to lease the area or a designated portion of the area covered by the permit for the purpose of mining or producing the minerals covered by the permit.

(b) An application to lease must designate the specific minerals the permittee is applying to lease. The commissioner may determine any additional information an application must contain.

(c) If the area designated for lease in the application is less than the area covered by the permit, the applicant shall include with the application field notes prepared by the county surveyor or by a

licensed state land surveyor describing the land designated.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 48, eff. Sept. 1, 1993.

Sec. 53.016. ISSUANCE OF LEASE. (a) After receipt of the bonus payment set by the commissioner, the lease shall be issued by the commissioner under the provisions of this subchapter and shall be for a primary term not to exceed 20 years and as long after that time as the minerals are produced in paying quantities.

(b) Any lease covering land adjacent to a military base shall require the lessee to forego the right to use the surface within 2,500 feet of the military base while exploiting the minerals. The commissioner may include in the lease any other provision the commissioner considers necessary for protection of the interests of the state.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5248, ch. 965, Sec. 11, eff. June 19, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 49, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 149, Sec. 15, eff. May 27, 2003.

Sec. 53.018. ROYALTY. The royalty under the lease shall not be less than one-sixteenth of the value of the minerals produced under the lease.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.019. PAYMENTS. Lease payments and royalty shall be paid to the commissioner at Austin, and all payments shall be credited to the account of the permanent school fund.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.020. ASSIGNMENT AND TRANSFER. A lease issued under this subchapter may be transferred or assigned at any time in the manner provided by Section 52.026 of this code.

Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 405, ch. 81, Sec. 21(l), eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 897, Sec. 50, eff. Sept. 1, 1993.

Sec. 53.021. FORFEITURE OF LEASE. (a) A lease is subject to forfeiture by act of the commissioner if:

(1) the lessee fails or refuses to pay any amount which is due either as a lease payment or royalty;

(2) the lessee or his authorized agent knowingly makes any false return or false report concerning the lease;

(3) the lessee or his agent refuses the commissioner or his authorized representative access to the records or other data relating to operations under the lease; or

(4) a material term of the lease is violated.

(b) Any area forfeited under this section is subject to application for a permit under the same terms as the original application.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.022. EFFECT OF SUBCHAPTER. None of the provisions of this subchapter shall apply to, alter, or affect any rights existing on June 22, 1955, under a valid permit issued by the commissioner under the provisions of Section 12, Chapter 271, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 5421c, Vernon's Texas Civil Statutes), but if the permittee desires that his lease continue as long as production is obtained in paying quantities, he shall pay lease payments and royalty provided in this subchapter.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.023. IMMEDIATE LEASE. If the commissioner determines that a certain mineral is located on a state tract subject to prospect under this subchapter, a lease for that mineral may be issued immediately on the application for the prospect permit if the applicant identifies the mineral in the application and requests the immediate issuance of the lease.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 20, eff. Aug. 26, 1985.

Sec. 53.024. PENALTY AND INTEREST. A lease issued under this subchapter shall be subject to Sections 52.131(e) through (j) of this code.

Added by Acts 1985, 69th Leg., ch. 923, Sec. 20, eff. Aug. 26, 1985. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 51, eff. Sept. 1, 1993.

Sec. 53.025. LEASE RELINQUISHMENT. A lease issued under this subchapter may be relinquished to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

Sec. 53.026. IN KIND ROYALTY. (a) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including contracts for sale, purchase, transportation, or storage.

(b) The commissioner or the commissioner acting on behalf of and at the direction of the board or a board for lease may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity.

(c) This section shall not be construed to surrender or in any way affect the right of the state under an existing or future lease to receive monetary royalty from its lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 405, Sec. 50, eff. Sept. 1, 1999.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 2, eff. May 17, 2019.

Sec. 53.027. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

Sec. 53.028. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records as provided by this code, a rule, or a lease provision is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential in this section is not subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding to which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by this section and contracts made confidential by Section 53.027 of this code to enforce this chapter or may authorize their use in judicial or administrative proceedings to which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information that is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under this code, a rule, or a lease provision or the release of other information that would have been properly included in reports required under this code, a rule, or a lease provision.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 52, eff. Sept. 1, 1993.

SUBCHAPTER C. LEASE OF MINERALS BY SURFACE OWNER

Sec. 53.061. AUTHORITY TO LEASE CERTAIN MINERALS. (a) The state constitutes the owner of the surface its agent to lease to any person any mineral, except oil and gas, which may be within all or part of a survey previously sold with all minerals reserved to the state.

(b) The lease shall be made on terms and conditions that may be prescribed by the school land board.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1061, Sec. 6, eff. Aug. 31, 1987.

Sec. 53.062. LEASE OF MINERALS SEPARATELY AND TOGETHER. Minerals covered by the provisions of this subchapter may be leased either separately or together.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.063. FORMS. The owner of the surface may lease to any person the minerals covered by this subchapter on lease forms prepared by the land office.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.064. PREREQUISITES FOR EFFECTIVENESS OF LEASE. (a) No lease executed by the owner of the surface is binding on the state unless it recites the actual consideration paid or promised for the lease. A lease covering land adjacent to a military base shall require the lessee to forego the right to use the surface within 2,500 feet of the military base while exploiting the minerals.

(b) No lease is effective until a certified copy is filed in the land office and the bonus accruing to the state is paid to the commissioner. The commissioner is entitled to reject for filing any lease submitted to him that he feels is not in the best interest of the state.

Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 149, Sec. 16, eff. May 27, 2003.

Sec. 53.065. PAYMENTS UNDER LEASE. (a) Under a lease executed under this subchapter before September 1, 1987, the lessee shall pay to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease. The lessee shall pay to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(b) Except as provided by Subsection (c), under a lease executed under this subchapter on or after September 1, 1987, the lessee shall pay:

(1) to the state 80 percent of all bonuses agreed to be paid for the lease and 80 percent of all rentals and royalties that are payable under the lease; and

(2) to the owner of the surface 20 percent of all bonuses agreed to be paid for the lease and 20 percent of all rentals and royalties payable under the lease.

(c) Under a lease executed under this subchapter on or after September 1, 1999, for the exploration and production by surface mining of coal, lignite, potash, sulphur, thorium, or uranium, the

lessee shall pay:

(1) to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease; and

(2) to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(d) If production is obtained, the state shall receive not less than one-sixteenth of the value of the minerals produced.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1061, Sec. 7, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 1483, Sec. 4, eff. Aug. 30, 1999.

Sec. 53.066. DAMAGES TO SURFACE. Payments made by the lessee to the owner of the surface as provided in this subchapter and acceptance of the payments by the owner of the surface are in place of all damages to the soil.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.067. PAYMENT PROCEDURE. Royalties and other payments accruing to the state under this subchapter shall be paid to the commissioner in Austin and shall be deposited in the fund to which the minerals belong.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.068. PRODUCTION REPORT AND RECORDS. (a) Each payment shall be accompanied by an affidavit of the lessee or his authorized agent indicating:

(1) the amount of minerals produced and marketed during the month;

(2) the person to whom the minerals were sold; and

(3) the selling price for the minerals as shown by copies

of the smelter, mint, mill, refinery, or other returns or documents attached to the affidavit.

(b) Books, accounts, weights, wage contracts, correspondence, and other documents or papers relating to production under this subchapter are open at all times to inspection by the commissioner or his authorized representatives.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.069. FORFEITURE OF LEASE. (a) A lease and all rights under a lease are subject to forfeiture by action of the commissioner if the lessee or his assignee, sublessee, receiver, or other agent in control of the lease:

(1) fails or refuses to pay any royalty within 30 days after it becomes due;

(2) fails or refuses to the proper authorities access to the records relating to the operations; or

(3) knowingly fails or refuses to give correct information to the proper authorities.

(b) The commissioner may declare the forfeiture when he is sufficiently informed of the facts that authorize the forfeiture. He shall write on the wrapper containing the papers relating to the lease words declaring the forfeiture and shall sign it officially. Then the lease and all rights under the lease together with payments made under it are forfeited.

(c) Notice of the forfeiture shall be mailed to the person shown by the records of the land office to be the owner of the surface and the owner of the forfeited lease at their last known addresses as shown in the land office records.

Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.070. REINSTATEMENT OF LEASE. (a) If the owner of the forfeited lease complies with the provisions of this subchapter within 30 days after the declaration of forfeiture, the commissioner may reinstate the lease under the terms of this subchapter and other terms that he may prescribe.

(b) If the lease is not reinstated within the 30-day period, the owner of the surface, as agent of the state, is entitled to lease the minerals.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.071. LIEN. The state has a first lien on all minerals produced from any lease to secure the payment of unpaid royalty or other amounts that are due under this subchapter.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.072. EFFECT OF CERTAIN LAWS. Any rights acquired under Articles 5388 through 5403, Revised Civil Statutes of Texas, 1925, before March 15, 1967, are not affected by the repeal of those articles, and the rights, powers, duties, and obligations conferred or imposed by those articles are governed by those repealed articles.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.073. CERTAIN MINERALS AND LAWS EXEMPT FROM SUBCHAPTER. The provisions of this subchapter do not apply to or affect oil and gas and do not affect the provisions of Subchapter F, Chapter 52 of this code or Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.074. AUTHORITY AND DUTIES OF AGENT. (a) Prohibition Against Self-Dealing. (1) The owner of the soil may not lease, either directly or indirectly, to himself or to a nominee, to any corporation or subsidiary in which he is a principal stockholder or to an employee of such a corporation or subsidiary, or to a partnership in which he is a partner or to an employee of such a

partnership. If the owner of the soil is a corporation or a partnership, then the owner of the soil may not lease, either directly or indirectly, to a principal stockholder of the corporation or to a partner of the partnership, or any employee of the corporation or partnership. The owner of the soil may not lease, either directly or indirectly, to his fiduciary, including but not limited to a guardian, trustee, executor, administrator, receiver, or conservator.

(2) Except as provided by this section, the owner of the soil may not lease, directly or indirectly, to a person related to him within and including the second degree of consanguinity or affinity, including a person related by adoption, or to a corporation or subsidiary in which that person is a principal stockholder, or to a partnership in which that person is a partner, or to an employee of such a corporation or subsidiary or partnership.

(3) An owner of the soil who wishes to lease to a person, corporation, or partnership described in Subdivision (2) may request the approval of the board for authority to execute such a lease before its execution. The owner of the soil requesting approval must also execute and file with the commissioner a sworn affidavit stating that the owner of the soil will not receive any benefit under a lease so approved by the board that will not be shared with the permanent school fund in the proportion prescribed by this subchapter.

(4) If an owner of the soil makes any material misstatement of fact in connection with an application to the board or affidavit made pursuant to Subdivision (3), then any lease executed pursuant to the authority of the board shall be voidable at the election of the commissioner. The election to void such a lease shall be cumulative of and in addition to all other remedies available to the commissioner or the state.

(b) Fiduciary Duty of Agent. An owner of the soil owes the state a fiduciary duty and a duty of utmost good faith. An owner of the soil must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the owner of the soil. In addition to these specific statutory duties, the owner of the soil owes the state all the common-law duties of a holder of executive rights.

(c) Consequences of a Breach of the Surface Owner's Fiduciary Duty or a Violation of the Prohibition Against Self-Dealing. When

the commissioner determines that an owner of the soil has breached any duty or obligation under this subchapter, the commissioner may request that the attorney general file an action or proceeding either to enforce the duties and obligations of the owner of the soil or to forfeit the then applicable agency rights of the surface owner. Such an action or proceeding shall be filed in a district court in Travis County.

(d) Leasing Procedure When Surface Owner's Agency Rights Have Been Forfeited. When the surface owner's agency rights have been forfeited in accordance with Subsection (c) of this section, the minerals subject to lease under this subchapter can then be leased under the leasing procedure set out for the lease of oil and gas under Section 52.175 of this code. The substantive provisions of Subchapter E of this chapter and Subchapters D and E, Chapter 32, of this code shall apply to the lease.

(e) A penalty of 10 percent shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. This penalty shall be applied only to amounts owed as a result of breaches occurring on and after the effective date of this section. The imposition of this penalty will not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10 percent penalty imposed by this subsection.

Added by Acts 1987, 70th Leg., ch. 912, Sec. 5, eff. Aug. 31, 1987. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 53, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 937, Sec. 4, eff. Sept. 1, 1995.

Sec. 53.075. ASSIGNMENT AND TRANSFER. A lease issued under this subchapter may be assigned or transferred at any time in the manner provided by Section 52.026 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.076. LEASE RELINQUISHMENT. A lease issued under this subchapter may be relinquished to the state at any time in the manner provided by Section 52.027 of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.077. IN KIND ROYALTY. (a) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on the behalf of and at the direction of an owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to dispose of or enhance their portion of the royalty taken in kind, including a contract for sale, transportation, or storage.

(b) The commissioner, each owner of the soil under this subchapter, or the commissioner acting on behalf of and at the direction of the owner of the soil under this subchapter may negotiate and execute a contract or any other instrument or agreement necessary to convert that portion of the royalty taken in kind to other forms of energy, other than electricity.

(c) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under an existing or future lease to receive monetary royalty from its lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.
Amended by Acts 1999, 76th Leg., ch. 405, Sec. 51, eff. Sept. 1, 1999.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 53 (H.B. 2263), Sec. 3, eff. May 17, 2019.

Sec. 53.078. PENALTY AND INTEREST. A lease issued under this subchapter shall be subject to Sections 52.131(e) through (j) of this code.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.079. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The

land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.080. AUDIT INFORMATION CONFIDENTIAL. (a) All information secured, derived, or obtained during the course of an inspection or examination of books, accounts, reports, or other records as provided by Section 53.068 of this code, a rule, or a lease provision is confidential and may not be used publicly, opened for public inspection, or disclosed, except for information in a lien filed under this chapter and except as permitted under Subsection (d) of this section.

(b) All information made confidential by this section is not subject to subpoena directed to the commissioner, the attorney general, or the governor except in a judicial or administrative proceeding to which this state is a party.

(c) The commissioner or the attorney general may use information made confidential by this section and contracts made confidential by Section 53.079 of this code to enforce this chapter or may authorize their use in judicial or administrative proceedings to which this state is a party.

(d) This section does not prohibit:

(1) the delivery of information made confidential by this section to the lessee or its successor, receiver, executor, guarantor, administrator, assignee, or representative;

(2) the publication of statistics classified to prevent the identification of a particular audit or items in a particular audit;

(3) the release of information that is otherwise available to the public; or

(4) the release of information concerning the amount of royalty assessed as a result of an examination conducted under Section 53.068 of this code, a rule, or a lease provision or the release of other information that would have been properly included in reports required under Section 53.068 of this code, a rule, or a lease provision.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 54, eff. Sept. 1, 1993.

Sec. 53.081. LEASE BY OWNER OF THE SOIL. (a) An owner of the soil of lands covered by this subchapter may lease those lands for the purpose of exploring for and producing minerals other than oil and gas in the manner provided by this section.

(b) An owner of the soil may apply in writing to the board for a lease of a mineral or minerals other than oil and gas.

(c) The application shall contain the following:

(1) the name and address of the applicant;

(2) a complete legal description of the land the applicant seeks to lease;

(3) the name and address of every owner of the soil of the land the applicant seeks to lease, if the applicant is not the sole owner of the soil;

(4) a brief letter opinion signed by an attorney licensed in this state setting out the surface ownership of the land sought to be leased;

(5) a statement of the applicant's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal mineral leases currently or previously held or operated by the applicant or other entity in which the applicant has or had a significant interest during the five-year period preceding the date of the application;

(6) a statement that the applicant intends to explore for and, if commercially reasonable, produce minerals other than oil and gas or if the applicant plans that another person or firm shall conduct exploration and production:

(A) the name and address of the person or firm;

(B) a description of such person's or firm's experience in the exploration for and production of minerals other than oil and gas, including, without limitation, a list of any State of Texas or federal minerals other than oil and gas leases currently or previously held or operated by the person or firm during the five-year period preceding the date of the application; and

(C) a description of the applicant's intended degree and type of participation in the exploration of and production from the property and all consideration or benefits the applicant expects to receive in connection with the exploration of and production from the property; and

(7) the amount of bonus, rental, royalty, and other lease

terms that the applicant proposes to pay or offer or pay and offer for the lease.

(d) The applicant shall provide geological, geophysical, geochemical, and other data or copies of the data, including interpretative data, pertinent to exploration for minerals other than oil and gas on the lands for which the application is made, in the applicant's possession or to which the applicant has reasonable access and which the applicant has the ability to provide to the land office. All such data shall be confidential and not subject to the provisions of the open records law, Chapter 552, Government Code, until one year after the expiration, termination, or forfeiture of a lease granted pursuant to this section. After one year after the expiration, termination, or forfeiture of such a lease, the data shall remain confidential to the extent permitted by Chapter 552, Government Code. If a lease is not issued, the data shall be returned to the applicant.

(e) The board may prescribe the form of the application, require additional information as it considers appropriate, and, by rule, otherwise provide for the implementation of this section.

(f) The staff of the land office shall review the information presented in the application, such other geological, geophysical, and geochemical data reasonably available to it relevant to the land proposed to be leased, and leasing information reasonably available to it relevant to the land proposed to be leased. The staff shall prepare a report to the board that contains:

(1) a summary of bonus, rental, royalty, and other lease terms then being offered and asked for leases of similar lands in the area of the land proposed to be leased; and

(2) data considered by the staff to be relevant, including, but not limited to, data concerning the land proposed to be leased and its estimated value for minerals other than oil and gas, recommended lease terms, and the applicant, including the applicant's history of leasing State of Texas or federal lands for minerals other than oil and gas.

(g) The board shall consider the application at a regular meeting. It may, in its sole discretion, grant or deny the application or grant the application subject to specified conditions. Such conditions may include a requirement that if the applicant does not materially participate in the exploration or development of the leased premises, through labor performed, cash or goods contributed,

or supplying other enhancement in value, the applicant must share equally with the permanent school fund any benefit derived from the lease.

(h) After the board has approved an application, the commissioner shall issue a lease to the applicant. The lease shall conform, as nearly as is practicable, to the form of lease prescribed by the commissioner under this chapter.

(i) The commissioner may not deliver a lease issued under this section until the applicant has executed and delivered to the commissioner a waiver of the applicant's right and duty to act as agent for the state in leasing the leased premises and to receive any part of the bonus, rental, royalty, and other consideration accruing to the owner of the soil under this subchapter. The waiver and the lease shall be effective as of the date the commissioner executes the lease.

(j) Upon the expiration, termination, or forfeiture of a lease issued under this section, the agency rights and duties of the applicant as owner of the soil are reinstated without the necessity for further action by the owner of the soil, the board, or the commissioner.

(k) If an applicant is not the sole owner of the soil, the applicant may secure leases from the other owners of the soil from which the applicant is not prohibited from leasing under Section 53.074. If the applicant must obtain a lease from an owner of the soil from whom the applicant would otherwise not be permitted to lease in order reasonably to explore for or produce or explore for and produce minerals other than oil or gas, the commissioner may approve the lease on the condition that the applicant shall not receive any benefit from the lease, and, if the applicant should acquire by any method, including devise or inheritance, the right to receive any rental, royalty, or other benefit accruing to the owner of the soil's interest under the lease, the applicant shall assign the benefit to the commissioner for the benefit of the permanent school fund.

(l) The commissioner shall not approve any lease obtained by an applicant from another owner of the soil if the lease contains terms that are substantially inconsistent with or provide for a lesser bonus, rental, or royalty than the lease approved by the board. If the bonus, rental, or royalty in a lease obtained by an applicant from another owner of the soil for a comparable interest is greater

than that approved by the board, then the lease approved by the board shall be amended to provide for the greater bonus, rental, or royalty, and the applicant shall be liable for all greater sums due. In determining whether an interest is comparable, the board shall consider the quantum of the interest, the time at which the lease was taken, and any other aspects of the lease transaction that the board considers to be relevant.

Added by Acts 1995, 74th Leg., ch. 937, Sec. 3, eff. Sept. 1, 1995.

SUBCHAPTER D. UNITIZATION OF SULPHUR PRODUCTION

Sec. 53.111. AUTHORITY TO OPERATE AN AREA AS A UNIT FOR PRODUCTION OF SULPHUR. The commissioner on behalf of the state or any fund that belongs to the state may execute agreements that provide for operating areas as a unit for the exploration, development, and production of sulphur and may commit to the agreements:

(1) the royalty interests in sulphur reserved to the state or any fund of the state by law in a patent, award, mining claim, or contract of sale or under the terms of any lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state under Section 51.201 or 51.054 of this code.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 55, eff. Sept. 1, 1993.

Sec. 53.112. APPROVAL OF CERTAIN AGREEMENTS BY SCHOOL LAND BOARD. (a) An agreement must be approved by the board and executed by the commissioner to be effective if the agreement commits:

(1) a royalty interest in land belonging to the permanent school fund or the asylum funds, in riverbeds, inland lakes, channels, or areas within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea; or

(2) the free royalty interests, whether leased or unleased, reserved to the state under Section 51.201 or 51.054 of this code.

(b) An owner of the soil who is subject to Subchapter C of this chapter may grant to a lessee prior authority to pool or unitize the

interest of the owner in a lease executed under that subchapter. For the agreement to bind the interest of an owner of the soil who is subject to Subchapter C of this chapter and who has not granted the lessee prior authorization to pool or unitize the interest of the owner in a sulphur lease executed under that subchapter, the agreement must be executed by the owner of the soil.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 56, eff. Sept. 1, 1993.

Sec. 53.113. APPROVAL OF AGREEMENTS. An agreement that commits the royalty interest in any land not listed in Section 53.112 of this code must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for sulphur and must be executed by the commissioner to be effective.

Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 57, eff. Sept. 1, 1993.

Sec. 53.114. COMMISSIONER'S APPROVAL. Before executing an agreement authorized by Section 53.111 of this code, the commissioner must find that the agreement is in the best interest of the state.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 58, eff. Sept. 1, 1993.

Sec. 53.115. PROVISIONS OF AGREEMENT. (a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each tract in the unit;

(2) that production allocated by the agreement to each tract included in the unit shall be considered for all purposes to have been production from the tract;

(3) that the interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit that is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect so long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and conditions of the lease.

(b) The agreement may include any other terms and conditions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land for sulphur may consider to be in the best interest of the state.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 59, eff. Sept. 1, 1993.

Sec. 53.116. APPLICATION TO UNIVERSITY LAND. None of the provisions of this subchapter apply to any land under the control and management of the Board of Regents of The University of Texas System.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.117. CONSTRUCTION OF SUBCHAPTER. (a) Agreements and operations under this subchapter are necessary to prevent waste and conserve the natural resources of the state and are not a violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions of this subchapter and the code cited in the previous subsection, this subchapter is intended as a reasonable exception to those laws which is necessary to prevent waste and conserve the natural resources.

(c) If a court finds that a conflict exists between this subchapter and the laws cited in Subsection (a) of this section and that this subchapter is not a reasonable exception to those laws, it is the intent of the legislature that this subchapter or any conflicting portion of this subchapter be declared invalid and that

the previously cited laws remain valid.

Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 53.118. RATIFICATIONS AND OTHER AGREEMENTS. (a) The board may approve, by rule or order, a ratification or other agreement that includes in the benefits of production a mineral or royalty interest in land belonging to the permanent school fund or the asylum funds.

(b) An agreement approved by the board under this section must be executed by the commissioner to be effective.

(c) A ratification or other agreement that commits any of the interests listed by Subsection (a) of this section in land not belonging to the permanent school fund or the asylum funds must be approved by the board, official, agent, agency, or authority of the state that has the authority to lease or to approve the lease of the land for sulphur and must be executed by the commissioner to be effective.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 60, eff. Sept. 1, 1993.

SUBCHAPTER E. LEASE OF PUBLIC SCHOOL AND GULF LAND FOR COAL, LIGNITE, SULPHUR, SALT, AND POTASH

Sec. 53.151. LEASE OF CERTAIN AREAS. (a) Under the provisions of this subchapter, the board may lease to any person for the production of coal, lignite, sulphur, salt, and potash:

(1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;

(2) the portion of the Gulf of Mexico within the jurisdiction of the state;

(3) rivers and channels that belong to the state;

(4) all unsold surveyed and unsurveyed public school land; and

(5) all land sold with a reservation of minerals to the state under Section 51.054 or 51.086 of this code in which the state has retained leasing rights.

(b) The lease may not be granted for any land within 2,500 feet of a military base.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1983, 68th Leg., p. 5245, ch. 965, Sec. 7, eff. June 19, 1983; Acts 2003, 78th Leg., ch. 149, Sec. 17, eff. May 27, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 13.002(c), eff. Sept. 1, 2003.

Sec. 53.152. LAWS APPLICABLE TO LEASES. Leases of land described by Section 53.151 of this code shall be made in the same procedural manner as leases of that land for oil and gas under Chapter 52 of this code.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 61, eff. Sept. 1, 1993.

Sec. 53.153. CONDITIONS OF LEASE. (a) Coal, lignite, sulphur, salt, and potash may be leased together or separately.

(b) A lease granted under this subchapter shall be for a primary term not to exceed 20 years and as long after that time as the minerals are produced in paying quantities.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 62, eff. Sept. 1, 1993.

Sec. 53.154. ROYALTY RATE. The board shall set the royalty rate on production of sulphur, coal, lignite, salt, and potash from land leased under this subchapter. The royalty rate set must be at least one-eighth of the gross production or the market value of the sulphur produced and at least one-sixteenth of the gross production or the market value of the coal, lignite, salt, and potash produced.

Added by Acts 1979, 66th Leg., p. 49, ch. 29, Sec. 1, eff. April 3, 1979. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 63, eff. Sept. 1, 1993.

Sec. 53.155. COMPENSATION FOR DAMAGES FROM USE OF SURFACE. (a)

Leases issued under Subchapter B or E of this chapter for unsold surveyed or unsurveyed school land, other than land included in islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state in tidewater limits and other than that portion of the Gulf of Mexico within the jurisdiction of the state, must include a provision requiring compensation for damages from the use of the surface in prospecting for, exploring, developing, or producing the leased minerals.

(b) The commissioner by rule shall set the procedure for receiving compensation for damages to the surface of land dedicated to the permanent school fund.

(c) Money collected for surface damages shall be deposited in a special fund account in the State Treasury to be used for conservation, reclamation, or constructing permanent improvements on land that belongs to the permanent school fund.

(d) The special fund account must be an interest-bearing account, and the interest received on the account shall be deposited in the State Treasury to the credit of the permanent school fund.

(e) Money collected under this section and designated for the construction of permanent improvements as provided by this section must be used not later than two years after the date on which the money is collected.

(f) Any money that remains in the special fund account for longer than two years shall be deposited in the State Treasury to the credit of the permanent school fund.

(g) Compensation for damages under this section is in addition to any bonus, rental, royalty, or other payment required by the lease.

Added by Acts 1985, 69th Leg., ch. 624, Sec. 48, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 32, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 897, Sec. 64, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 328, Sec. 9, eff. Jan. 1, 2004.

Sec. 53.156. CONTRACTS AND AGREEMENTS. On the land office's written request, mailed to the lessee's address as shown on its lease or otherwise properly changed in conformity with the terms of the lease, a copy of a contract for the sale or processing of minerals leased under this subchapter and any subsequent agreement or

amendment to the contract shall be filed in the land office within 30 days after the date the land office mails the written request. The land office shall treat a contract, agreement, or amendment filed in the land office as confidential unless otherwise authorized by the lessee.

Added by Acts 1993, 73rd Leg., ch. 897, Sec. 65, eff. Sept. 1, 1993.

SUBCHAPTER F. GEOPHYSICAL AND GEOCHEMICAL EXPLORATION PERMIT

Sec. 53.161. DEFINITIONS. In this subchapter:

(1) "Mineral(s)" means coal, lignite, sulphur, salt, and potash.

(2) "Geophysical exploration" means a survey or investigation conducted to discover or locate mineral prospects using magnetic, gravity, seismic, and/or electrical techniques.

(3) "Geochemical exploration" means a survey or investigation conducted to discover or locate mineral prospects using techniques involving soil sampling and analysis.

(4) "Public school land" means land dedicated by the constitution or laws of this state to the permanent free school fund, but does not include land with a mineral classification described in Section 53.061 of this chapter in which the state has retained the minerals, nor does it include areas within tidewater limits.

(5) "Permit" means a license issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(6) "Permittee" means the holder of a permit.

(7) "Areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 66, eff. Sept. 1, 1993.

Sec. 53.162. PERMIT REQUIRED FOR EXPLORATION. (a) Except for a person who has a valid mineral lease on public school land authorized by this chapter, a person may not conduct geophysical or

geochemical exploration on public school land unless the person obtains a permit from the commissioner.

(b) Every person who is authorized to conduct a geophysical or geochemical exploration on public school land shall comply with the commissioner's rules relating to such exploration. A person with a valid mineral lease on land subject to this chapter shall comply with the commissioner's rules concerning exploration.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1993, 73rd Leg., ch. 897, Sec. 67, eff. Sept. 1, 1993.

Sec. 53.163. LAWS APPLICABLE TO PERMITS. Permits for geophysical and geochemical exploration under this subchapter shall be issued in the same manner and under the same terms and conditions as permits for oil and gas under Subchapter I of Chapter 52 of this code.

Added by Acts 1981, 67th Leg., p. 2453, ch. 631, Sec. 2, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 624, Sec. 49, eff. Sept. 1, 1985.

Sec. 53.1631. GROUNDWATER. (a) Unless otherwise expressly provided by statute, deed, patent, or other grant from the State of Texas, groundwater shall not be considered a mineral in any past or future reservation of title or rights to minerals by the State of Texas.

(b) Notwithstanding Subsection (a), the State of Texas shall retain any and all rights to reasonable use of the surface and groundwater for mineral development and production purposes.

Added by Acts 2003, 78th Leg., ch. 1091, Sec. 32, eff. June 20, 2003.

SUBTITLE E. BEACHES AND DUNES

CHAPTER 61. USE AND MAINTENANCE OF PUBLIC BEACHES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 61.001. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General

Land Office.

(2) "Construction" means causing or carrying out any building, bulkheading, filling, clearing, excavation, or any substantial improvement to land or the size of any structure.

(3) "Department" means the Parks and Wildlife Department.

(4) "Land office" means the General Land Office.

(4-a) "Launch" and "space flight activities" have the meanings assigned by Section 100A.001, Civil Practice and Remedies Code.

(5) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.

(6) "Littoral owner" means the owner of land adjacent to the shore and includes a lessee, licensee, or anyone acting under the littoral owner's authority.

(7) "Local government" means a municipality, county, or any other political subdivision of the state.

(7-a) "Meteorological event" means atmospheric conditions or phenomena resulting in avulsion, erosion, accretion, or other impacts to the shoreline that alter the location of the line of vegetation.

(8) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 4, eff. June 7, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 1, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 1, eff. September 1, 2013.

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

Sec. 61.011. POLICY AND RULES. (a) It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

(b) The legislature recognizes that, in order to provide and maintain public facilities and public services to enhance access to and safe and healthy use of the public beaches by the public, adequate funds are required to provide public facilities and public services. Any local government responsible for the regulation, maintenance, and use of such beaches may charge reasonable fees pursuant to its authority to cover the cost of discharging its responsibilities with respect to such beaches, provided such fees do not exceed the cost of such public facilities and services, and do not unfairly limit public access to and use of such beaches.

(c) The commissioner shall strictly and vigorously enforce the prohibition against encroachments on and interferences with the public beach easement.

(d) The commissioner shall promulgate rules, consistent with the policies established in this section, on the following matters only:

(1) acquisition by local governments or other appropriate entities or public dedication of access ways sufficient to provide adequate public ingress and egress to and from the beach within the area described in Subdivision (6);

(2) protection of the public easement from erosion or reduction caused by development or other activities on adjacent land and beach cleanup and maintenance;

(3) local government prohibitions of vehicular traffic on public beaches, provision of off-beach parking, the use on a public beach of a golf cart, as defined by Section 551.401, Transportation Code, for the transportation of a person with a physical disability, and other minimum measures needed to mitigate for any adverse effect

on public access and dune areas;

(4) imposition of beach access, user, or parking fees and reasonable exercises of the police power by local governments with respect to public beaches;

(5) contents and certification of beach access and use plans and standards for local government review of construction on land adjacent to and landward of public beaches, including procedures for expedited review of beach access and use plans under Section 61.015;

(6) construction on land adjacent to and landward of public beaches and lying in the area either up to the first public road generally parallel to the beach or to any closer public road not parallel to the beach, or to within 1,000 feet of mean high tide, whichever is greater, that affects or may affect public access to and use of public beaches;

(7) the temporary suspension under Section 61.0185 of enforcement of the prohibition against encroachments on and interferences with the public beach easement and the ability of a property owner to make repairs to a house while a suspension is in effect;

(8) the determination of the line of vegetation or natural line of vegetation;

(9) the factors to be considered in determining whether a structure, improvement, obstruction, barrier, or hazard on the public beach:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(10) the procedures for determining whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section;

(11) the closure of beaches for space flight activities; and

(12) the temporary suspension under Section 61.0171 of the determination of the "line of vegetation" or the "natural line of vegetation."

(e) Repealed by Acts 2003, 78th Leg., ch. 245, Sec. 9.

(f) Chapter 2007, Government Code, does not apply to rules adopted under Subsection (d)(7).

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 5, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 1, 9, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 10, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 40 (H.B. 1213), Sec. 1, eff. May 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 2, eff. May 24, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 2, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 13.001, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 5, eff. June 14, 2019.

Sec. 61.012. DEFINITION. In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.013. PROHIBITION. (a) It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively, lawfully and legally to enter or to leave any public beach or to use any public beach or any larger area abutting on or contiguous to a public beach if the public has acquired a right of

use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Unless properly certified as consistent with this subchapter, no person may cause, engage in, or allow construction landward of and adjacent to a public beach within the area described in Section 61.011(d)(6) of this code in a manner that will or is likely to affect adversely public access to and use of the public beach. The prohibition in this subsection takes effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

(c) For purposes of this section, "public beach" shall mean any beach bordering on the Gulf of Mexico that extends inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom. This definition does not include a beach that is not accessible by a public road or public ferry as provided in Section 61.021 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 2, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 4818, ch. 850, Sec. 1, eff. June 19, 1983; Acts 1991, 72nd Leg., ch. 295, Sec. 6, eff. June 7, 1991.

Sec. 61.014. DENIAL OF ACCESS BY POSTING. (a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) No person may display or cause to be displayed on or adjacent to any public beach any sign, marker, or warning, or make or cause to be made any written or oral communication which states that the public beach is private property or represent in any other manner

that the public does not have the right of access to the public beach as guaranteed by this subchapter.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1607, ch. 681, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 7, eff. June 7, 1991.

Sec. 61.015. BEACH ACCESS AND USE PLANS. (a) Each local government with ordinance authority over construction adjacent to public beaches and each county that contains any area of public beach within its boundaries shall adopt a plan for preserving and enhancing access to and use of public beaches within the jurisdiction of the local government. Such beach access and use plans must be consistent with the policies in Section 61.011 of this code and the rules promulgated thereunder and Chapter 63 of this code and shall to the greatest extent practicable incorporate the local government's ordinary land use planning procedures. A municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this subchapter.

(b) Local governments shall submit proposed beach access and use plans to the commissioner for certification as to compliance with such policies and rules. The commissioner shall act on a local government's proposed beach access and use plan within 90 days of submission by either approving the plan or denying certification. In the event of denial, the commissioner shall send the proposed plan back to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the local government shall revise and resubmit the plan. The commissioner's certification of local government plans shall be by adoption into the rules under Section 61.011.

(c) A littoral owner proposing construction adjacent to and landward of a public beach in the area described in Section 61.011(d)(6) shall submit a development plan to the appropriate local government. The local government shall forward a development plan for small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories or less in height to the commissioner no less than 10 working days prior to acting on the

development plan. The local government shall forward a development plan for large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height to the commissioner no less than 30 working days prior to acting on the development plan. The commissioner may submit comments on the proposed construction to the local government.

(d) The local government shall review the proposed development plan and the commissioner's comments and other information the local government may consider useful to determine consistency with the local government's beach access and use plan.

(e) If the proposed construction is required to be permitted by the local government under Chapter 63 of this code, the local government shall consider the issuance of the permit concurrently with the certification under this section, unless otherwise provided by rules promulgated under Section 61.011 of this code.

(f) The local government, after considering all appropriate information, shall make the determination and shall certify that the construction as proposed either is consistent with the local government's beach access and use plan or is inconsistent with the local government's beach access and use plan, in which case the local government must specify how the construction is inconsistent with the plan.

(g) The local government may include in the certification any reasonable terms and conditions it finds necessary to assure adequate public beach access and use rights consistent with Chapter 63 of this code.

(h) The requirements of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code.

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 8, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 2, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 11, eff. September 1, 2007.

Sec. 61.016. BOUNDARIES FOR AREAS WITH NO MARKED VEGETATION LINE. (a) To determine the "line of vegetation" in any area of

public beach in which there is no clearly marked line of vegetation (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the "line of vegetation" shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the "line of vegetation" shall not extend inland further than 200 feet from the seaward line of mean low tide.

(d) The "line of vegetation" is dynamic and may move landward or seaward due to the forces of erosion or natural accretion. For the purposes of determining the public beach easement, if the "line of vegetation" is obliterated due to a meteorological event, the landward boundary of the area subject to the public easement shall be the line established by order under Section 61.0171(a) or as determined by the commissioner under Section 61.0171(f).

Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 9, eff. June 7, 1991.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 3, eff. September 1, 2013.

Sec. 61.017. LINE OF VEGETATION UNAFFECTED BY CERTAIN CONDITIONS. (a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them or by artificial fill, the addition or removal of turf, beach nourishment projects or artificial placement of dredged or fill material, whether conducted by public or private entities, or other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same

manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

(c)(1) In an area of public beach where a seawall structure constructed in its entirety as a single structure of one design before 1970 and continuously maintained with a height of not less than 11 feet above mean low tide interrupts the natural line of vegetation for a distance not less than 4,000 feet nor greater than 4,500 feet, the line of vegetation is along the seaward side of the seawall for the distance marked by the seawall, provided that prior to September 2, 1997:

(A) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the seawall and adjacent sidewalk by the general public;

(B) fee title to the surface estate to an area for public parking and other public uses adjacent to the seawall has been conveyed to and accepted by a public entity, which area contains sufficient acreage to provide at least one parking space for each 15 linear feet of the seawall, is located within the center one-third of the length of the seawall or not farther than 300 feet from that center one-third, and has frontage on the seawall for at least 300 linear feet; and

(C) permanent roadway easements exist within 1,000 feet of each end of the seawall affording vehicular access from the nearest public road to the beach.

(2) A line of vegetation established as described in this subsection shall be the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(d)(1) In an area of public beach where a combination stone revetment and concrete sheet pile wall constructed in its entirety as a single structure before 1999 and continuously maintained with a height of not less than five feet above mean low tide interrupts the natural line of vegetation for a distance not less than 7.5 miles and not more than 8.5 miles, the line of vegetation is along the landward boundary of that strip of land conveyed to the United States of

America for the construction of the stone revetment and concrete sheet pile wall and for the distance marked by the stone revetment and concrete sheet pile wall.

(2) A line of vegetation established as described by this subsection is the landward boundary of the public beach and of the public easement for all purposes. Fee title to all submerged land as described in this code shall remain in the State of Texas.

(e) In an area of public beach where a shore protection structure constructed as provided by Section 61.022(a)(6) interrupts the natural line of vegetation for a distance of at least 1,000 feet, the line of vegetation is along the seaward side of the shore protection structure for the distance marked by that structure. A line of vegetation established under this subsection is the landward boundary of the public beach and of the public easement for all purposes, provided that before or concurrently with the construction of the structure:

(1) a perpetual easement has been granted in favor of the public affording pedestrian, noncommercial use along and over the entire length of the structure and an adjacent sidewalk by the general public; and

(2) the subdivision that constructed the shore protection structure has provided a public parking area of sufficient acreage to provide at least one parking space for each 15 linear feet of the structure, located so that ingress and egress ways are not more than one-half mile apart.

(f) Before a subdivision of this state begins construction of a shore protection structure described by Subsection (e), the subdivision must conduct and obtain the commissioner's approval of a coastal boundary survey under Section 33.136. The state retains fee title to all land described by Section 11.012 that is occupied by or affected by the placement of the structure.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 593, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 331, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 999, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 377 (H.B. 1445), Sec. 1, eff. June 19, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 4, eff.

September 1, 2013.

Sec. 61.0171. TEMPORARY SUSPENSION OF LINE OF VEGETATION DETERMINATION. (a) The commissioner may, by order, suspend action on conducting a line of vegetation determination for a period of up to three years from the date the order is issued if the commissioner determines that the line of vegetation was obliterated as a result of a meteorological event. For the duration of the order, the public beach shall extend to a line 200 feet inland from the line of mean low tide as established by a licensed state land surveyor.

(b) An order issued under this section shall be:

(1) posted on the land office's Internet website;

(2) published by the land office as a miscellaneous document in the Texas Register; and

(3) filed for record by the land office in the real property records of the county in which the area of beach subject to the order is located.

(c) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:

(1) a duty on the part of the commissioner to issue an order related to the line of vegetation; or

(2) a private cause of action for:

(A) issuance of an order under this section; or

(B) failure to issue an order under this section.

(d) Chapter 2007, Government Code, does not apply to an order issued under this section.

(e) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or private land owners for the period the order is in effect.

(f) Following the expiration of an order issued under this section, the commissioner shall make a determination regarding the line of vegetation in accordance with Sections 61.016 and 61.017 and taking into consideration the effect of the meteorological event on the location of the public beach easement.

(g) The commissioner may consult with the Bureau of Economic Geology of The University of Texas at Austin or a licensed state land surveyor and consider other relevant factors when making a

determination under Subsection (f) regarding the annual erosion rate for the area of beach subject to the order issued under this section.

(h) The line of vegetation, as determined by the commissioner under Subsection (f), shall constitute the landward boundary of the area subject to public easement until the line of vegetation moves landward due to a subsequent meteorological event, erosion, or public use, or until a final court adjudication establishes the line in another place.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 5, eff. September 1, 2013.

Sec. 61.018. ENFORCEMENT. (a) Except as provided by Subsection (a-1), any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove or prevent any improvement, maintenance, obstruction, barrier, or other encroachment on a public beach, or to prohibit any unlawful restraint on the public's right of access to and use of a public beach or other activity that violates this chapter.

(a-1) A county attorney, district attorney, or criminal district attorney or the attorney general may not file a suit under Subsection (a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if:

(1) the line of vegetation establishing the boundary of the public beach moved as a result of a meteorological event that occurred before January 1, 2009;

(2) the house was located landward of the natural line of vegetation before the meteorological event;

(3) a portion of the house continues to be located landward of the line of vegetation; and

(4) the house is located on a peninsula in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico.

(a-2) The owner of a house described by Subsection (a-1) may

repair or rebuild the house if the house was damaged or destroyed by the meteorological event.

(a-3) Notwithstanding Subsection (a-1), a county attorney, district attorney, or criminal district attorney or the attorney general may file a suit under Subsection (a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house described by Subsection (a-1) from a public beach if the house was damaged or destroyed by the meteorological event and the owner of the house fails to repair or rebuild the house before September 1, 2013.

(b) In the same suit, the attorney general, the commissioner, county attorney, district attorney, or criminal district attorney may recover penalties and the costs of removing any improvement, obstruction, barrier, or other encroachment if it is removed by public authorities pursuant to an order of the court or a removal order issued by the commissioner as provided by Section 61.0183.

(c) A person who violates this chapter or a removal order issued by the commissioner as provided by Section 61.0183 is liable for a civil penalty of not less than $50 nor more than $2,000. Each day the violation occurs or continues is a separate violation.

(d) Any county attorney, or the attorney general at the request of the commissioner, may bring a suit for a declaratory judgment to try any issue affecting the public's right of access to or use of the public beach.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 10, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 3, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 12, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 1417 (H.B. 770), Sec. 1, eff. January 1, 2010.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 106, eff. September 1, 2011.

Sec. 61.0181. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty against a person who violates this chapter or a rule adopted under this chapter in the amount provided

by Section 61.018(c) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0182. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0183. REMOVAL OF CERTAIN STRUCTURES, IMPROVEMENTS, OBSTRUCTIONS, BARRIERS, AND HAZARDS ON PUBLIC BEACH. (a) The commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach if the commissioner finds the structure, improvement, obstruction, barrier, or hazard to be on the public beach as defined by Section 61.013(c) and:

(1) the structure, improvement, obstruction, barrier, or hazard was constructed or placed on the beach in a manner that is inconsistent with the local government's beach access and use plan; or

(2) the structure, improvement, obstruction, or barrier constitutes an imminent hazard to safety, health, or public welfare.

(b) The decision to remove a structure, improvement, obstruction, barrier, or hazard under this section is discretionary with the commissioner. This section does not impose a duty on the state to remove a structure, improvement, obstruction, barrier, or hazard or to remedy or warn of a hazardous condition on the public

beach.

(c) The commissioner may contract for the removal and disposal of a structure, improvement, obstruction, barrier, or hazard under this section and may pay the costs of removal from money appropriated by the legislature.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0184. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) The commissioner shall make a determination that a structure is located on the public beach, assess an administrative penalty, and pursue the removal of a structure, improvement, obstruction, barrier, or hazard from a public beach in accordance with this section.

(b) Before the commissioner may notify the Texas Windstorm Insurance Association as provided by Section 2210.004, Insurance Code, regarding the status of property, the commissioner must give written notice and an opportunity for a hearing to a person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard on the public beach. The notice must state that:

(1) the commissioner finds that a specific structure is located on the public beach as determined under this chapter, and:

(A) constitutes an imminent hazard to safety, health, or public welfare; or

(B) substantially interferes with the free and unrestricted right of the public to enter or leave the public beach or traverse any part of the public beach;

(2) the commissioner intends to notify the Texas Windstorm Insurance Association of a determination in accordance with Section 2210.004, Insurance Code; and

(3) the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard located on the public beach may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing to contest the determination.

(c) Before the commissioner may order the removal of a structure, improvement, obstruction, barrier, or hazard under Section 61.0183 or impose an administrative penalty under Section 61.0181,

the commissioner must provide written notice to the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard. The notice must:

(1) describe the specific structure, improvement, obstruction, barrier, or hazard that violates this subchapter;

(2) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard is required to remove the structure, improvement, obstruction, barrier, or hazard:

(A) not later than the 30th day after the date on which the notice is served, if the structure, improvement, obstruction, barrier, or hazard is obstructing access to or use of the public beach; or

(B) within a reasonable time specified by the commissioner if the structure, improvement, obstruction, barrier, or hazard is an imminent and unreasonable threat to public health, safety, or welfare;

(3) state that failure to remove the structure, improvement, obstruction, barrier, or hazard may result in liability for a civil penalty under Section 61.018(c), removal by the commissioner and liability for the costs of removal, or any combination of those remedies; and

(4) state that the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(d) A person is considered to be the person who owns, maintains, controls, or possesses an improvement, obstruction, barrier, or other encroachment on the public beach for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the improvement, obstruction, barrier, or other encroachment on the public beach.

(e) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the notice on the structure, improvement, obstruction, barrier, or hazard and by publishing notice in a newspaper with general circulation in the county in which the structure, improvement, obstruction, barrier, or

hazard is located at least two times within 10 consecutive days.

(f) The commissioner by rule may adopt procedures for a hearing under this section.

(g) The commissioner must grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 30 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure, improvement, obstruction, barrier, or hazard and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning a determination regarding whether a structure is not insurable property for purposes of Section 2210.004, Insurance Code, because of the factors listed in Subsection (h) of that section or concerning removal of the structure, improvement, obstruction, barrier, or hazard and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge or may vacate or modify an order issued by the administrative judge in accordance with Section 2001.058, Government Code.

(h) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(i) If the person who is constructing, maintains, controls, owns, or possesses the structure, improvement, obstruction, barrier, or hazard does not pay assessed penalties, removal costs, and other assessed fees and expenses on or before the 30th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) sell salvageable parts of the structure, improvement, obstruction, barrier, or hazard to offset those costs;

(2) request that the attorney general institute civil proceedings to collect the penalties, costs of removal, and other fees and expenses remaining unpaid; or

(3) use any combination of the remedies prescribed by this subsection, or other remedies authorized by law, to collect the unpaid penalties, costs of removal, and other fees and expenses assessed because of the structure, improvement, obstruction, barrier, or hazard on the public beach and its removal by the commissioner.

(j) Penalties or costs collected under this section shall be deposited in the coastal erosion response account as established under Section 33.604.

(k) Notwithstanding any other provision of this subchapter, if a structure that is the subject of an order for removal under Section 61.0183 or an administrative penalty under Section 61.0181 has been used as a permanent, temporary, or occasional residential dwelling by at least one person at any time during the year before the date on which the order is issued or the penalty is assessed:

(1) the notice required by Subsection (c) must state that the person who is constructing, maintains, controls, owns, or possesses the structure may submit, not later than the 90th day after the date on which the notice is served, written request for a hearing;

(2) if the person does not request a hearing within 90 days after the date on which the notice is served, the person waives all rights to judicial review of the commissioner's findings or orders and shall immediately remove the structure and pay any penalty assessed; and

(3) the amount of the administrative penalty assessed may not exceed $1,000 for each day the violation occurs or continues.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 13, eff. September 1, 2007.

Sec. 61.0185. TEMPORARY SUSPENSION OF SUBMISSION OF REQUESTS THAT ATTORNEY GENERAL FILE SUIT. (a) The commissioner by order may suspend for a period of three years from the date the order is issued the submission of a request that the attorney general file a suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach if the commissioner determines that:

(1) the line of vegetation establishing the boundary of the public beach has moved as a result of a meteorological event;

(2) the house was located landward of the natural line of vegetation before the meteorological event; and

(3) the house does not present an imminent threat to public health and safety.

(b) The commissioner shall make a determination under Subsection (a) regarding the line of vegetation in accordance with Sections 61.016 and 61.017.

(c) The commissioner shall consult with the Bureau of Economic Geology of The University of Texas at Austin when making a determination under Subsection (a) regarding:

(1) the line of vegetation; or

(2) the effect of a meteorological event on the location of the public beach easement.

(d) This section does not apply to a house that the commissioner determines to be:

(1) located in whole or in part below mean high tide; or

(2) more than 50 percent destroyed as a result of a meteorological event.

(e) An order issued under this section shall be:

(1) posted on the land office's Internet website;

(2) published by the land office as a miscellaneous document in the Texas Register; and

(3) filed for record by the land office in the real property records of the county in which the house is located.

(f) The commissioner shall notify the attorney general and each pertinent county attorney, district attorney, or criminal district attorney of the issuance of an order under this section.

(g) A county attorney, district attorney, or criminal district attorney may not file suit under Section 61.018(a) to obtain a temporary or permanent court order or injunction, either prohibitory or mandatory, to remove a house from a public beach while the house is subject to an order issued under this section.

(h) While an order issued under this section is in effect, a local government may:

(1) issue a certificate or permit authorizing repair of a house subject to the order if the local government determines that the repair:

(A) is solely to make the house habitable;

(B) complies with rules adopted by the commissioner under Section 61.011(d)(7); and

(C) does not increase the footprint of the house or involve the use of concrete, Fibercrete, or other impervious materials seaward of the line of vegetation; and

(2) allow utilities to be reconnected to a house subject to the order.

(i) Issuance of an order under this section is purely within the discretion of the commissioner. This section does not create:

(1) a duty on the part of the commissioner to issue an order related to all or part of a house, regardless of any determination made; or

(2) a private cause of action for:

(A) issuance of an order under this section; or

(B) failure to issue an order under this section.

(j) Chapter 2007, Government Code, does not apply to an order issued under this section.

(k) If the commissioner issues an order under this section, a limitations period established by statute, under common law, or in equity that may be asserted or claimed in any action under this chapter is suspended and does not run against this state, the public, or the owner of the house for the period the order is in effect.

(l) Expenses incurred while an order issued under this section is in effect by the owner of a house in an effort to repair or otherwise make the house habitable may not be claimed as damages in any litigation with this state or a local government that may be filed to enforce this chapter.

Added by Acts 2003, 78th Leg., ch. 245, Sec. 4, eff. June 18, 2003.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1086 (H.B. 3459), Sec. 6, eff. September 1, 2013.

Sec. 61.019. DECLARATORY JUDGMENT SUITS. (a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.020. PRIMA FACIE EVIDENCE. (a) In a suit or administrative proceeding brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area a common law right or easement in favor of the public for ingress and egress to the sea.

(b) The determination of the location of the line of vegetation by the commissioner as provided by Sections 61.016 and 61.017 constitutes prima facie evidence of the landward boundary of the area subject to the public easement until a court adjudication establishes the line in another place.

Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 11, eff. June 7, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 14, eff. September 1, 2007.

Sec. 61.021. AREA NOT COVERED BY SUBCHAPTER. (a) None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

(b) A local government or local official may not adopt, apply, or enforce a beach access and use plan or any other provision of this subchapter within a state or national park area, wildlife refuge, or other designated state or national natural area.

(c) Any requirement to keep a beach open for vehicular traffic under this subchapter or rules adopted under this subchapter does not apply to a beach or segment of a beach within 3,100 feet of a natural science laboratory in a county with a population of 40,000 or less.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 14, eff. June

7, 1991.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1175 (H.B. 3461), Sec. 32, eff. June 19, 2009.

Sec. 61.0211. STATE OR NATIONAL PARK COVERED BY SUBCHAPTER. This subchapter applies to any island or peninsula that is a state or national park or wildlife management area regardless of whether the island or peninsula is accessible by public road or ferry facility.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 12, eff. June 7, 1991.

Sec. 61.022. GOVERNMENT AGENCIES AND SUBDIVISIONS. (a) The provisions of this subchapter do not prevent any of the following governmental entities from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States:

(1) an agency, department, institution, subdivision, or instrumentality of the federal government;

(2) an agency, department, institution, or instrumentality of this state;

(3) a county;

(4) a municipality;

(5) a subdivision of this state, other than a county or municipality, acting in partnership with the county or municipality in which the structure is located; or

(6) a subdivision of this state, acting with the approval of the commissioner, if the structure is a shore protection structure that:

(A) is designed to protect public infrastructure, including a state or county highway or bridge;

(B) is located on land that:

(i) is state-owned submerged land or was acquired for the project by a subdivision of this state; and

(ii) is located in or adjacent to the mouth of a natural inlet from the Gulf of Mexico; and

(C) extends at least 1,000 feet along the shoreline.

(a-1) In granting approval of a shore protection structure under Subsection (a)(6) of this section, the commissioner may specify requirements for the design and location of the structure or any public parking area required by Section 61.017(e).

(b) No local government may regulate vehicular traffic so as to prohibit vehicles from an area of public beach or impose or increase public beach access, parking, or use fees in any manner inconsistent with the policies of Section 61.011 of this code or the rules promulgated thereunder.

(c) A local government proposing to adopt or amend such vehicular traffic regulations, except those for public safety, or fees shall submit a plan detailing the proposed action to the commissioner for review. The commissioner shall certify whether the proposed action is consistent or inconsistent with such policies and rules. Certifications of consistency shall be by adoption into the rules promulgated under Section 61.011.

(d) Subsections (b) and (c) of this section take effect only on adoption of final rules by the commissioner under Section 61.011 of this code. Subsections (b) and (c) of this section do not apply to any existing local government traffic regulation or beach access, parking, or use fee adopted or enacted before the effective date of Subsections (b) and (c) of this section, and the former law is continued in effect for the purpose of the existing regulations and fees, until the regulations or fees are amended or changed in whole or in part.

(e) State-owned or public land not specifically exempted by this chapter shall be subject to the same requirements of this chapter as land owned by private littoral owners except as provided by Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 13, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 5, eff. June 18, 2003. Amended by:

Acts 2009, 81st Leg., R.S., Ch. 377 (H.B. 1445), Sec. 2, eff. June 19, 2009.

Sec. 61.023. EFFECT ON LAND TITLES AND PROPERTY ADJACENT TO AND

ON BEACHES. The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.024. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.025. DISCLOSURE TO PURCHASER OF PROPERTY. (a) Except as provided by Subsection (b), a person who sells or conveys an interest, other than a mineral, leasehold, or security interest, in real property located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel must include in any executory contract for conveyance a statement in substantially the following form:

CONCERNING THE PROPERTY AT _____

DISCLOSURE NOTICE CONCERNING LEGAL AND ECONOMIC RISKS OF PURCHASING COASTAL REAL PROPERTY NEAR A BEACH

WARNING: THE FOLLOWING NOTICE OF POTENTIAL RISKS OF ECONOMIC LOSS TO YOU AS THE PURCHASER OF COASTAL REAL PROPERTY IS REQUIRED BY STATE LAW.

- READ THIS NOTICE CAREFULLY. DO NOT SIGN THIS CONTRACT UNTIL YOU FULLY UNDERSTAND THE RISKS YOU ARE ASSUMING.
- BY PURCHASING THIS PROPERTY, YOU MAY BE ASSUMING ECONOMIC RISKS OVER AND ABOVE THE RISKS INVOLVED IN PURCHASING INLAND REAL PROPERTY.

• IF YOU OWN A STRUCTURE LOCATED ON COASTAL REAL PROPERTY NEAR A GULF COAST BEACH, IT MAY COME TO BE LOCATED ON THE PUBLIC BEACH BECAUSE OF COASTAL EROSION AND STORM EVENTS.

• AS THE OWNER OF A STRUCTURE LOCATED ON THE PUBLIC BEACH, YOU COULD BE SUED BY THE STATE OF TEXAS AND ORDERED TO REMOVE THE STRUCTURE.

• THE COSTS OF REMOVING A STRUCTURE FROM THE PUBLIC BEACH AND ANY OTHER ECONOMIC LOSS INCURRED BECAUSE OF A REMOVAL ORDER WOULD BE SOLELY YOUR RESPONSIBILITY.

The real property described in this contract is located seaward of the Gulf Intracoastal Waterway to its southernmost point and then seaward of the longitudinal line also known as 97 degrees, 12', 19" which runs southerly to the international boundary from the intersection of the centerline of the Gulf Intracoastal Waterway and the Brownsville Ship Channel. If the property is in close proximity to a beach fronting the Gulf of Mexico, the purchaser is hereby advised that the public has acquired a right of use or easement to or over the area of any public beach by prescription, dedication, or presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

The extreme seaward boundary of natural vegetation that spreads continuously inland customarily marks the landward boundary of the public easement. If there is no clearly marked natural vegetation line, the landward boundary of the easement is as provided by Sections 61.016 and 61.017, Natural Resources Code.

Much of the Gulf of Mexico coastline is eroding at rates of more than five feet per year. Erosion rates for all Texas Gulf property subject to the open beaches act are available from the Texas General Land Office.

State law prohibits any obstruction, barrier, restraint, or interference with the use of the public easement, including the placement of structures seaward of the landward boundary of the easement. OWNERS OF STRUCTURES ERECTED SEAWARD OF THE VEGETATION LINE (OR OTHER APPLICABLE EASEMENT BOUNDARY) OR THAT BECOME SEAWARD OF THE VEGETATION LINE AS A RESULT OF PROCESSES SUCH AS SHORELINE EROSION ARE SUBJECT TO A LAWSUIT BY THE STATE OF TEXAS TO REMOVE THE STRUCTURES.

The purchaser is hereby notified that the purchaser should:

(1) determine the rate of shoreline erosion in the vicinity of the real property; and

(2) seek the advice of an attorney or other qualified person before executing this contract or instrument of conveyance as to the relevance of these statutes and facts to the value of the property the purchaser is hereby purchasing or contracting to purchase.

(b) If the statement is not included in the executory contract for conveyance or there is no executory contract for conveyance, the statement must be delivered to, and receipt thereof acknowledged by, the purchaser not later than 10 calendar days prior to closing the transaction.

(c) Failure to comply with Subsection (a) or (b), as applicable, shall be grounds for the purchaser to terminate the contract or agreement to convey, and upon termination any earnest money shall be returned to the party making the deposit.

(d) A seller commits a deceptive act under Section 17.46, Business & Commerce Code, if the seller fails to comply with Subsection (a) or Subsection (b), as applicable.

(e) This section, or the failure of a person to give or receive the notice in the manner required by this section, does not diminish or modify the beach access and use rights of the public acquired through statute or under common law.

Added by Acts 1985, 69th Leg., ch. 350, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 1987, 70th Leg., ch. 75, Sec. 1, eff. Aug. 31, 1987; Acts 1999, 76th Leg., ch. 508, Sec. 10, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 14, eff. September 1, 2007.

Sec. 61.026. BEACH ACCESS PUBLIC AWARENESS AND EDUCATION. (a) The land office in conjunction with the Texas Department of Transportation shall design and produce a uniform bilingual beach access sign to be used by local governments to designate access ways to and from public beaches.

(b) The land office may develop and distribute public information about the requirements of this chapter, the importance of natural beach and dune systems, and the necessity for preserving them. Such information may include public service announcements made under the direction of the land office.

(c) The Texas A&M University Sea Grant Program shall make available to public schools materials for natural science classes which explain the importance of natural beach and dune systems and the necessity of preserving them.

Added by Acts 1991, 72nd Leg., ch. 295, Sec. 15, eff. June 7, 1991. Amended by Acts 1995, 74th Leg., ch. 165, Sec. 22(54), eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 245, Sec. 6, eff. June 18, 2003.

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

Sec. 61.061. PURPOSE. It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.062. PUBLIC POLICY. It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.063. DEFINITIONS. In this subchapter:

(1) "Clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

(2) "Land office" means the General Land Office.

Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 1, eff. Sept. 1, 1991.

Sec. 61.064. APPLICATION OF SUBCHAPTER. This subchapter applies to incorporated cities, towns, and villages that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city, town, or village or county that makes application for funds under this subchapter has within its boundaries public beaches.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 366, ch. 163, Sec. 1, eff. Aug. 27, 1979.

Sec. 61.065. DUTY OF CITIES. (a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.066. DUTY OF COUNTY. It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 61.067. DUTY OF STATE. (a) It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

(a-1) Notwithstanding Sections 61.065 and 61.066, the land office shall clean, maintain, and clear debris from a public beach that is located in an area designated as a threatened area in a declaration of a state of disaster issued under Section 418.014, Government Code. The duty of the land office under this subsection is limited to debris related to the event that is the subject of the disaster declaration.

(b) The land office shall consult with the department in adopting rules and procedures for cleaning beaches in state parks and areas adjacent to state parks.

(c) The land office shall expand the Adopt-A-Beach program to the greatest extent feasible to enhance the performance of its duties under this subchapter.

(d) The land office may use any cash, gifts, grants, donations, or in-kind contributions that it receives from a public or private entity through the administration of the Adopt-A-Beach program to assist a municipality, a county, or the department in performing any duty imposed on the city, county, or department by this subchapter.

(e) The land office may adopt rules reasonably necessary to perform its duties under this subchapter.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 2, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 3, Sec. 7.01, eff. Sept. 1, 1991.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 6 (H.B. 2457), Sec. 1, eff. May 5, 2009.

Sec. 61.068. APPLICATION REQUIREMENT. A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 3, eff. Sept. 1, 1991.

Sec. 61.069. CONTENTS OF APPLICATION. To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the land office may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the land office.

Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 4, eff. Sept. 1, 1991.

Sec. 61.070. PARKING AND USE FEES. Subsection (4), Section 61.069 of this code shall not be construed to prohibit the assessment

of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.071. COMPLIANCE BEFORE APPROVAL. The land office shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 5, eff. Sept. 1, 1991.

Sec. 61.072. STATE FUNDS. The land office shall pay to each city or county that has an application approved under Sections 61.068 through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 6, eff. Sept. 1, 1991.

Sec. 61.073. CONDITIONS FOR PAYMENTS. No payments shall be made under this subchapter until the land office finds that:

(1) there will be available in the budget of the city or county not less than $20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 7, eff. Sept. 1, 1991.

Sec. 61.074. SUBMISSION OF PROPOSED EXPENDITURES. A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the land office proposed expenditures for cleaning and maintaining the public beaches.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 8, eff. Sept. 1, 1991.

Sec. 61.075. FAIR DISTRIBUTION OF FUNDS. The land office shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the land office.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 9, eff. Sept. 1, 1991.

Sec. 61.076. LIMITATION ON STATE SHARE. (a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The land office shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

(c) For purposes of determining the maximum amount of money a municipality may receive under Subsection (a), money received under Section 156.2511, Tax Code:

(1) is not included in determining the amount the municipality spends to clean and maintain public beaches during the state fiscal year for which reimbursement is sought; and

(2) is included as part of the state share.

Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 10, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 454, Sec. 9, eff. Sept. 1, 1995.

Sec. 61.077. FUNDS FOR ADMINISTRATIVE PURPOSES AND EMERGENCIES. (a) The land office may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The land office may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 11, eff. Sept. 1, 1991.

Sec. 61.078. AUTHORITY TO SPEND COUNTY FUNDS. The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.079. NOTICE OF INELIGIBILITY. After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the land office finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the land office is satisfied that there is no longer any failure to comply.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 12, eff. Sept. 1, 1991.

Sec. 61.080. PUBLIC BEACHES IN INELIGIBLE CITY. (a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the land office for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The land office shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 13, eff. Sept. 1, 1991.

Sec. 61.081. PUBLIC BEACHES IN INELIGIBLE COUNTY. (a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the land office for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The land office shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 114, Sec. 14, eff. Sept. 1, 1991.

Sec. 61.082. AUTHORITY OF LOCAL GOVERNMENTS. (a) Except as provided by Section 61.067(a-1), the provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 6 (H.B. 2457), Sec. 2, eff. May 5, 2009.

Sec. 61.083. EXEMPTIONS FROM SUBCHAPTER. None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COUNTY REGULATION OF PUBLIC USE OF BEACHES

Sec. 61.121. DEFINITION. In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.122. COUNTY REGULATORY AUTHORITY. (a) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county, including prohibiting motor vehicle traffic on any natural or man-made sand dune or other form of shoreline protection, and may prohibit the littering of the beach and may define the term "littering."

(b) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate the possession of animals on the beach within its boundaries, including but not limited to prohibiting animals to run at large on said beach.

(c) The commissioners court of a county bordering the Gulf of Mexico or its tidewaters, by order, may regulate swimming in passes leading to and from the Gulf of Mexico, located within its boundaries, including but not limited to prohibiting swimming in said passes and posting signs notifying persons of such regulation or prohibition.

(d) The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may prohibit the use and possession of all glass containers and products on a beach in the unincorporated area of the county. The commissioners court shall not prohibit any one or several glass products to the exclusion of any others.

(e) Regulation under Subsection (a) of this section that prohibits vehicles from an area of public beach is subject to Section 61.022 of this code.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 775, ch. 341, Sec. 1, eff. Aug. 27, 1979; Acts 1991, 72nd Leg., ch. 295, Sec. 16, eff. June 7, 1991; Acts 2001, 77th Leg., ch. 164, Sec. 2, 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 243, Sec. 1, eff. May 22, 2001.

Sec. 61.123. NOTICE OF HEARING. (a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain

copies of the proposed order from the commissioners court.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.124. COPIES OF ORDER. The commissioners court shall make copies of the proposed order available to interested persons.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.125. PUBLIC HEARING. (a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.126. TRAFFIC REGULATIONS. If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.127. CRIMINAL PENALTIES. In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

(1) for a first conviction, a fine of not less than $50; nor more than $100;

(2) for a second conviction, a fine of not less than $100

nor more than $200;

(3) for any subsequent convictions after the second conviction, a fine of not less than $200 nor more than $1,000 or confinement in the county jail for not more than 60 days, or both.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 585, Sec. 3, eff. Sept. 1, 1985.

Sec. 61.128. ORDER PREVAILS OVER STATE LAW. If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.129. ORDINANCE PREVAILS OVER ORDER AND STATE LAW. (a) Except as provided in Section 61.022 of this code, this subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, and the ordinance is consistent with policies and rules under Section 61.011 of this code, the ordinance shall control over the state law and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 17, eff. June 7, 1991.

Sec. 61.130. RIGHTS OF THE PUBLIC. The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this

subchapter and to ordinances enacted by an incorporated city, town, or village.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.131. EFFECT OF SUBCHAPTER ON DEFINITION OF PUBLIC BEACH. None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.132. CLOSING OF BEACHES FOR SPACE FLIGHT ACTIVITIES. (a) This section applies only to a county bordering on the Gulf of Mexico or its tidewater limits that contains a launch site the construction and operation of which have been approved in a record of decision issued by the Federal Aviation Administration following the preparation of an environmental impact statement by that administration.

(b) A person planning to conduct a launch in a county to which this section applies must submit to the commissioners court proposed primary and backup launch dates for the launch.

(c) To protect the public health, safety, and welfare, the commissioners court by order may temporarily close a beach in reasonable proximity to the launch site or access points to the beach in the county on a primary or backup launch date, subject to Subsection (d).

(d) The commissioners court may not close a beach or access points to the beach on a primary launch date consisting of any of the following days without the approval of the land office:

(1) the Saturday or Sunday preceding Memorial Day;

(2) Memorial Day;

(3) July 4;

(4) Labor Day; or

(5) a Saturday or Sunday that is after Memorial Day but before Labor Day.

(e) The commissioners court must comply with the county's beach

access and use plan adopted and certified under Section 61.015 and dune protection plan adopted and certified under Chapter 63 when closing a beach or access point under this section.

(f) The land office may:

(1) approve or deny a beach or access point closure request under Subsection (d);

(2) enter into a memorandum of agreement with the commissioners court of a county to which this section applies to govern beach and access point closures made under this section; and

(3) adopt rules to govern beach and access point closures made under this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 152 (H.B. 2623), Sec. 3, eff. May 24, 2013.

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

Sec. 61.161. PUBLIC POLICY. It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.162. FINDINGS. (a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and

unrestricted rights of ingress and egress of the public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.163. DEFINITION. In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.164. APPLICATION. A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the county of jurisdiction.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 1, eff. Aug. 28, 1995.

Sec. 61.165. CONTENTS OF APPLICATION. The application shall include:

(1) the name and street address of the applicant;

(2) the commodity to be sold or leased; and

(3) the limits of the territory within which the mobile business establishment will operate.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.166. FILING FEE. (a) The application shall be accompanied by a filing fee in an amount determined by the county.

(b) The filing fee may be used by the county to pay the expenses of carrying out the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 267, art. 2, Sec. 75, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 679, Sec. 63, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 399, Sec. 2, eff. Aug. 28, 1995.

Sec. 61.167. SEPARATE APPLICATIONS. Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.168. GRANTING LICENSE. (a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the county shall grant the license.

(b) The license shall be valid for a term selected by the county, not to exceed two years from the day it is issued.

(c) If the license is not granted, the county shall return the filing fee to the applicant.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1985, 69th Leg., ch. 342, Sec. 1, eff. June 10, 1985; Acts 1995, 74th Leg., ch. 399, Sec. 3, eff. Aug. 28, 1995.

Sec. 61.169. APPLICATIONS NOT TO BE GRANTED. The county shall not grant an application:

(1) for a business establishment located at a fixed or permanent location on a public beach; or

(2) that does not otherwise meet the terms and provisions of this subchapter.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 4, eff. Aug. 28, 1995.

Sec. 61.170. LICENSE PROHIBITION AGAINST GLASS CONTAINERS. (a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.171. ASSIGNMENT. No license issued under this subchapter may be assigned.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.172. TERMINATION AND REVOCATION OF LICENSE. (a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not

effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.173. MAXIMUM TERRITORIAL LIMITS. (a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the county may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 5, eff. Aug. 28, 1995.

Sec. 61.174. ADDITIONAL STANDARDS. In addition to other standards provided in this subchapter, it is the intention of the legislature that the county exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the county should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the county under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the county.

Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 6, eff. Aug. 28, 1995.

Sec. 61.175. RULES, PROCEDURES, AND CONDITIONS. The county may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 7, eff. Aug. 28, 1995.

Sec. 61.176. AREAS EXEMPT FROM SUBCHAPTER. This subchapter does not apply to a public beach that is within the boundaries of a state park designated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.177. PENALTY. A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the county shall be fined not less than $10 nor more than $200.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 399, Sec. 8, eff. Aug. 28, 1995.

Sec. 61.178. ENFORCEMENT. At the request of a county, department game wardens will assist with enforcement of the provisions of this Act, or permits issued hereunder, along with any other state or local law enforcement entities with jurisdiction over public beaches.

Added by Acts 1995, 74th Leg., ch. 399, Sec. 9, eff. Aug. 28, 1995.

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

Sec. 61.211. FINDINGS. The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.212. EXEMPTIONS FROM SUBCHAPTER. (a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes provided in Subsection (a) of this section without obtaining a permit from the commissioners court.

Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.213. APPLICATION. Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public

beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.214. CONTENTS OF APPLICATION. The application shall include:

(1) the name of the applicant;

(2) the location and dimensions of the proposed excavation;

(3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and

(4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of $50.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.215. PREREQUISITES TO ISSUANCE OF PERMIT. No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.216. NOTICE OF APPLICATIONS RECEIVED. (a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand,

marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.217. PUBLIC HEARING. (a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.218. NOTICE OF PUBLIC HEARING. Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.

Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.219. ISSUANCE OF PERMIT. (a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to

cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.220. RETURN OF FILING FEE. If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.221. ASSIGNMENT OF PERMITS. No permit may be assigned without the approval of the commissioners court.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.222. TERMINATION AND REVOCATION OF PERMIT. Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.223. SUITS FOR ORDERS AND INJUNCTIONS. The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct takes place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an

incorporated city, town, or village in violation of the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.224. PENALTY. A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than $10 nor more than $200. Each day a violation occurs constitutes a separate offense.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.225. SAND, MARL, GRAVEL, OR SHELL FROM PUBLIC BEACHES WITHIN INCORPORATED CITIES, TOWNS, OR VILLAGES. No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.226. APPLICATION OF SUBCHAPTER TO CERTAIN ISLANDS AND PENINSULAS. The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 61.227. AUTHORITY OF PARKS AND WILDLIFE DEPARTMENT. None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code.

Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. PERMITS FOR MASS GATHERINGS

Sec. 61.251. DEFINITION. In this subchapter, "mass gathering" means a gathering that attracts or is expected to attract more than 200 individuals who will remain at the location of the gathering for more than two continuous hours.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.252. PERMIT REQUIREMENTS. (a) To protect the public health, safety, and welfare, the commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate mass gatherings of individuals on any beach in the unincorporated area of the county by requiring a person to obtain a permit and pay a permit fee set by the commissioners court before the person may hold a mass gathering.

(b) A commissioners court that requires a permit under this subchapter must adopt procedures governing the application for and issuance of a permit under this subchapter. The commissioners court may require the holder of the permit to take reasonable specified actions to protect the public health, safety, and welfare.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.253. INJUNCTION. The county is entitled to appropriate injunctive relief to prevent the violation or threatened violation of an order adopted under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

Sec. 61.254. CRIMINAL PENALTY. A person commits an offense if the person violates an order adopted under this chapter. An offense under this section is a Class B misdemeanor.

Added by Acts 2001, 77th Leg., ch. 1109, Sec. 1, eff. June 15, 2001.

CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 62.001. APPLICABILITY. (a) The provisions of this chapter apply to counties that are located or border on the Gulf of Mexico and have within their boundaries beaches that are suitable for park purposes. The suitability of a beach for park purposes is established conclusively when the commissioners court of the county makes a finding that the beach located within its boundaries, but not located within the boundaries of an incorporated city, is suitable for park purposes.

(b) As long as an island or peninsula is not accessible by a public road or common carrier ferry facility, the provisions of this chapter do not apply to that island or peninsula.

(c) The provisions of this chapter do not interfere with, preempt, or in any manner restrict or usurp the authority of the land office over state-owned beaches.

(d) The provisions of this chapter do not prohibit the creation of, or limit the lawful actions of, a beach park board of trustees of a home-rule city as provided in Chapter 306, Local Government Code.

(e) The provisions of this chapter do not permit any interference with the right the public has under the provisions of Subchapter B, Chapter 61, to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation, as that term is defined in Section 61.001. A county, county official, or anyone acting under the authority of this chapter may not exercise any authority, contract out a right to exercise authority, or otherwise delegate

authority beyond that specifically granted to it in Sections 61.122 through 61.128 over that area notwithstanding any of the specific provisions of this chapter. The rights established in Subchapters B and D, Chapter 61, are paramount over the rights or interests that might otherwise be created by the provisions of this chapter, and nothing in this chapter encroaches on those rights or upon land, or interests in land, that may ultimately be held subject to those rights.

Acts 1977, 65th Leg., p. 2492, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 149, Sec. 39, eff. Sept. 1, 1987.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 13.001, eff. September 1, 2013.

Sec. 62.002. DEFINITION. In this chapter, "board" means the Beach Park Board of Trustees.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. CREATION OF BOARD

Sec. 62.011. PURPOSE AND AUTHORITY. A county located or bordering on the Gulf of Mexico with a beach suitable for park purposes may create a board in the manner provided in this subchapter for the purpose of improving, equipping, maintaining, financing, and operating a public park or parks, or any facilities owned by the county, or to be acquired by the county, or to be managed by the county under the terms of a written contract. The board, to be designated Beach Park Board of Trustees, has the powers and duties specified in this chapter.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.012. METHOD OF CREATING BOARD. A board may be created after a favorable majority vote of the qualified voters of the county

voting at an election held on the proposition.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.013. ELECTION. (a) The election shall be called by the commissioners court.

(b) Notice of the election shall be given in the manner provided by Chapter 1251, Government Code.

(c) The ballots shall be printed to provide for voting for or against the proposition: "Establishing a beach park board of trustees."

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.353, eff. Sept. 1, 2001.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Sec. 62.041. MEMBERS OF BOARD. (a) The board is composed of seven members appointed by the commissioners court.

(b) One board member shall be a member of the commissioners court.

Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.042. TERM OF OFFICE. (a) With the exception of the trustees first appointed, a trustee serves for a term of two years from the date of appointment.

(b) At the time of the appointment of the first trustees, the commissioners court shall designate three trustees to serve for one year and four trustees to serve for two years.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.043. OATH AND BOND. (a) A trustee shall qualify

within 15 days after his appointment by taking the official oath and filing a good and sufficient bond with the county clerk.

(b) The bond shall be approved by the commissioners court, payable to the county, in a sum not to exceed $5,000 as approved by the commissioners court of the county, and conditioned on the faithful performance of the duties of the trustee, including his proper handling of all money which may come into his hands in his capacity as a member of the board.

(c) The cost of the bond shall be paid by the board.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.044. COMPENSATION; EXPENSES. A trustee serves without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of his official duties.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.045. VACANCY. A vacancy on the board shall be filled by appointment of the commissioners court.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.046. OFFICERS OF BOARD. (a) On the appointment of the first trustees, the commissioners court shall designate one of the trustees to serve as chairman of the board for a period of one year.

(b) After the first year the board annually shall elect a chairman, a vice-chairman, a secretary, and a treasurer from among its members. The office of secretary and treasurer may be held by the same person.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.047. PARK MANAGER. The board may employ and compensate a manager for any parks or facilities and may give him full authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.048. LEGAL SERVICES. (a) The board may call on the county attorney of the county for the legal services it requires.

(b) In lieu of or in addition to the county attorney, the board may employ and compensate its own counsel and legal staff.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.049. EMPLOYEES OF BOARD. (a) The board may employ temporary or permanent secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents and employees it requires.

(b) The board shall determine the qualifications, duties, and compensation of its employees.

Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.050. MEETINGS. (a) The board shall hold regular meetings at times set by the board.

(b) The board may hold special meetings at the times business or necessity requires. Special meetings may be called by the chairman or any three members of the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.051. BOARD RECORDS. (a) The board shall keep a true and full record of all its meetings and proceedings and maintain the

records of the board in a secure manner.

(b) The board may contract with the commissioners court of the county to have the county keep and maintain its records.

(c) All the records are the property of the board and are subject to inspection by the commissioners court at all reasonable times.

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

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 1248, Sec. 65, eff. Sept. 1, 1989.

Sec. 62.052. MANAGEMENT OF FUNDS. The money belonging to or under control of the board shall be deposited and secured in the same manner prescribed by law for county funds.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.053. AUDIT. Independent auditors selected by the board shall make an annual audit of all financial transactions and records of the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.054. COURT ACTIONS. The board may sue and be sued in its own name.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.055. SEAL. The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments usually executed

under seal and on other instruments required by the board.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. POWERS AND DUTIES

Sec. 62.091. LAND UNDER JURISDICTION, MANAGEMENT, AND CONTROL. (a) The following land is under the jurisdiction of the board:

(1) public beaches owned in fee by the county; and

(2) land used as parks in connection with public beaches not located inside the boundaries of an incorporated city and not inside the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Section 61.001.

(b) The Commissioners Court may designate the following land to be under the management and control of the board:

(1) additional parks and facilities owned by the county; or

(2) additional parks and facilities to be managed by the county under the terms of a written contract.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 13.002, eff. September 1, 2013.

Sec. 62.092. PRIORITY OF JURISDICTION. (a) The board has no jurisdiction over a public beach located inside the boundaries of the county that has been designated a national park, national seashore, or state park.

(b) The authority of the board preempts the right of the county board of park commissioners to act with regard to a beach, park, or facility within the jurisdiction of the board.

(c) The provisions of this chapter are cumulative of other laws relating to county parks but take precedence in the event of conflict.

Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 62.093. PARK AUTHORITY. The board may manage, operate, maintain, equip, improve, and finance:

(1) an existing public park placed under its jurisdiction by the commissioners court; or

(2) additional parks acquired by gift or otherwise but not acquired by the exercise of the power of eminent domain.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.094. FEE CHARGED. The board may charge and collect a reasonable fee for access or entrance to or parking on the land under its jurisdiction, other than public beaches owned by the county, or use of a facility located on land under its jurisdiction.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.095. USE OF FUNDS. (a) The board may accept, receive, and spend gifts of money or other things of value from any person for the purpose of performing any function, power, or authority vested in the board and funds from the county that are appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control.

(b) The board may spend money appropriated by the commissioners court for the purpose of cleaning and maintaining public beaches and land within its jurisdiction, including money appropriated to the commissioners court by the state for that purpose.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.096. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING

TO LAND AND FACILITIES. The board may enter into a contract, lease, or other agreement connected with, incident to, or affecting the financing, construction, equipping, maintenance, or operation of facilities located or to be located on or pertaining to land under its jurisdiction or facilities under its control and may execute and perform its lawful powers and functions on land leased from others.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.097. CONTRACTS, LEASES, AND OTHER AGREEMENTS RELATING TO MANAGEMENT, OPERATION, AND MAINTENANCE OF LAND AND FACILITIES. The board may enter into any contract, lease, or agreement with any person for a period of not more than 40 years relating to the management, operation, and maintenance of a concession, facility, improvement, leasehold, land, or other property over which the board has jurisdiction and control.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.098. CONTRACTS WITH OTHER GOVERNMENTAL AGENCIES. To accomplish any purpose authorized in this chapter, the board may enter into contracts with:

(1) adjacent counties;

(2) boards in adjacent counties; and

(3) boards in cities of the same county in which the board has jurisdiction.

Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.099. ADVERTISING. The board may publish brochures and otherwise advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.100. RULES. The board may adopt and enforce reasonable rules for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons carrying on a business activity inside the area of the public parks and facilities.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.101. LEGISLATIVE INTENT. It is the intent of the legislature in enacting the provisions of this chapter that the rights established or recognized in Subchapters B and D of Chapter 61 of this code are paramount over any rights or interests that might otherwise be considered created by this chapter, and none of the provisions of this chapter may trench on those rights or encroach on land or interests in land that may ultimately be held subject to those rights.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. ISSUANCE OF BONDS

Sec. 62.131. AUTHORITY TO ISSUE REVENUE BONDS. For the purpose of acquiring, developing, improving, and enlarging public recreational areas and facilities, the board may issue revenue bonds payable solely from:

(1) the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board; or

(2) any other source of funds the board may wish to dedicate for that purpose.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.132. FORMAL REQUIREMENTS OF BONDS. (a) The bonds may be issued by resolution adopted by the board without the necessity of an election.

(b) The bonds may be issued in the name of the board in one or more installments or series and shall mature serially or otherwise within 40 years from their date or dates.

(c) The bonds shall be issued on the terms and conditions, with regard to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds, that the board specifies in the resolution or resolutions authorizing the bonds.

(d) The bonds shall be executed by the chairman and secretary of the board and shall be signed by the chairman and secretary or shall bear the facsimile signature of either or both.

(e) The bonds shall display the seal of the board, which may be impressed, printed, or lithographed on the bonds.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.133. SALE OF BONDS. The board shall sell the bonds on the best terms obtainable.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 1276, Sec. 13.003(a), eff. Sept. 1, 2003.

Sec. 62.134. APPROVAL AND REGISTRATION. The bonds shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved as to legality by the attorney general and the bonds are registered by the comptroller of public accounts.

Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.135. AUTHORIZED INVESTMENTS. The bonds issued under the provisions of this subchapter are legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.136. SECURITY FOR DEPOSITS. The bonds are eligible to secure the deposit of public funds of the state and public funds of cities, towns, villages, or other political corporations or subdivisions of the state and are lawful and sufficient security for deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant to them.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.137. TAX BONDS. (a) The board shall not issue bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and spend the proceeds of bonds payable from taxes which are issued by the governing body of the county for park purposes after the bonds are authorized at an election held in the manner required by law.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 62.138. REFUNDING BONDS. (a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding bonds of the board.

(b) The refunding bonds shall be issued, approved as to legality by the attorney general, and registered by the comptroller of public accounts in the manner and on the terms and conditions provided in this subchapter for the issuance of original revenue

bonds.

Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. DISSOLUTION OF BOARD

Sec. 62.161. ORDER CALLING ELECTION TO DISSOLVE; NOTICE OF ELECTION. (a) The commissioners court may order an election to dissolve a board.

(b) The commissioners court shall give notice of the election. The notice must include:

(1) the name of the board;

(2) the proposal that the board be dissolved; and

(3) the place, date, and time of the election.

(c) The notice shall be published in a newspaper of general circulation in the county once a week for two consecutive weeks. The first publication must occur not later than the 21st day before the date on which the election will be held.

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

Sec. 62.162. ELECTION TO DISSOLVE. (a) An election to dissolve a board shall be held on the first authorized uniform election date prescribed by the Election Code that allows sufficient time to comply with the requirements of law and that occurs after the date on which the commissioners court orders the election.

(b) The ballot shall be printed to provide for voting for or against the following: "Dissolving the [name of county] Beach Park Board of Trustees and transferring its parks jurisdiction, assets and liabilities to the [name of county] Commissioners Court."

(c) A copy of the tabulation of results shall be filed with the county clerk of the county in which the board is located.

(d) If a majority of those voting at the election vote to dissolve the board, the board and the commissioners court shall proceed with dissolution. An election to create a new board under this chapter in that county may not be held for at least one year after dissolution.

(e) If a majority of those voting at the election vote against dissolving the board, the commissioners court may not order another

election on the issue before the first anniversary of the date of the canvass of the election.

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

Sec. 62.163. ADMINISTRATION OF PROPERTY, DEBTS, AND ASSETS AFTER DISSOLUTION. (a) After a vote to dissolve a board, the board shall continue to control and administer the property, debts, and assets of the board until:

(1) the board executes and files a written assignment of all its property, debts, and assets to the commissioners court; and

(2) the commissioners court executes and files in its minutes an acceptance and assumption of the property, debts, and assets of the board.

(b) The assignment prescribed by Subsection (a) must be filed with the commissioners court not later than the 30th day after the date of the canvass of the election.

(c) After the commissioners court determines that the requirements of this section have been fulfilled, the commissioners court shall enter an order dissolving the board.

(d) Each trustee is discharged from liability under the trustee's bond on entry of the order prescribed by Subsection (c).

(e) An employee or contract of the board becomes an employee or contract of the county, acting by and through its commissioners court, on entry of the order prescribed by Subsection (c).

Added by Acts 1997, 75th Leg., ch. 1135, Sec. 1, eff. June 19, 1997.

CHAPTER 63. DUNES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 63.001. FINDINGS OF FACT. The legislature finds and declares:

(1) that the mainland gulf shoreline, barrier islands, and peninsulas of this state contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are and historically have been wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of vegetated and unvegetated sand dunes that provide a protective barrier for adjacent

land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers and caused environmental damage in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles and other activities over these dunes have destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to natural resources and to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms and are areas of significant biological diversity;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline; and

(8) that different areas of the coast are characterized by dunes of various types and values, all of which should be afforded protection.

Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 1, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 18, eff. June 7, 1991.

Sec. 63.002. DEFINITIONS. In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, off-highway vehicle, as defined by Section 551A.001, Transportation Code, or any other mechanized

vehicle that is being used for recreational purposes, but does not include a vehicle that is not being used for recreational purposes.

(5) "Mainland shoreline" means all shoreline fronting on the open Gulf of Mexico that is not located on a barrier island or a peninsula.

(6) "Restoration" means the repair or replacement of dunes or dune vegetation.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 2, eff. Aug. 26, 1985.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 15, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 895 (H.B. 1044), Sec. 1, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 6, eff. June 14, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1233 (H.B. 1548), Sec. 41(1), eff. June 14, 2019.

Sec. 63.003. EFFECT OF CHAPTER. The provisions of this chapter do not apply to any dune area not accessible by public road or common carrier ferry facility for as long as that condition exists.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985.

SUBCHAPTER B. DUNE PROTECTION LINE

Sec. 63.011. ESTABLISHING DUNE PROTECTION LINE. (a) After notice and hearing, the commissioners court of each county that has within its boundaries mainland shoreline, a barrier island, or a peninsula located on the seaward shore of the Gulf of Mexico shall establish a dune protection line on any such shoreline, island, or peninsula within its boundaries for the purpose of preserving sand dunes.

(b) A county may allow a municipality within the county to administer this chapter within its corporate limits and

extraterritorial jurisdiction. On delegation by a county, a municipality may adopt and apply any appropriate ordinances within its extraterritorial jurisdiction to effect the purposes of this chapter.

(c) Municipalities and counties may enter into interlocal cooperation contracts for the administration of dune permit programs under The Interlocal Cooperation Act (Article 4413(32c), Vernon's Texas Civil Statutes).

(d) The land office may assist and advise counties and municipalities in establishing or altering dune protection lines.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 19, eff. June 7, 1991.

Sec. 63.012. LOCATION OF DUNE PROTECTION LINE. The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.013. NOTICE. (a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.014. MAP AND DESCRIPTION OF DUNE PROTECTION LINE. (a) The commissioners court or governing body of each municipality in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description,

or by both. Each shall be designated appropriately and filed with the clerk of the county or municipality establishing the line and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 20, eff. June 7, 1991.

Sec. 63.015. DUNE PROTECTION LINE PROHIBITED. No dune protection line may be established within a state or national park area, wildlife refuge, or other designated state or national natural area; provided, however, any state-owned or other public land not specifically exempted by this section shall be subject to the same requirements as private lands except as provided in Sections 31.161 through 31.167 of this code.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 21, eff. June 7, 1991.

SUBCHAPTER C. PERMITS

Sec. 63.051. PERMIT REQUIREMENT. An owner of land or a person holding an interest in land under the owner who desires to perform or allow any of the acts prohibited in Section 63.091 of this code must apply for a permit from the appropriate commissioners court or municipal governing body.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 22, eff. June 7, 1991.

Sec. 63.052. PERMIT NOT REQUIRED. No permit is required for the following activities:

(1) grazing livestock;

(2) production of oil and gas; and

(3) recreational activity other than the operation of a recreational vehicle.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 63.053. FEES. (a) The commissioners court or governing body of the municipality may require a reasonable fee to accompany the application.

(b) Any commissioners court or governing body of a municipality that has adopted a dune protection line and is administering this chapter and that has a certified beach access plan as provided for in Section 61.015 of this code is hereby authorized, subject to all requirements of Chapter 61 of this code, to charge reasonable fees that do not exceed the cost for the provision and maintenance of public beach related facilities and services necessary to implement such plans, including but not limited to parking, public health and safety, environmental protection and matters contained in the certified beach access plans, and that do not unfairly limit access to and use of such beaches.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 23, eff. June 7, 1991.

Sec. 63.054. REVIEW. (a) The commissioners court or governing body of the municipality shall evaluate the permit application, and if the commissioners court or governing body of the municipality finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or materially damage vegetation on the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the permit.

(b) In determining whether or not to grant the permit, the commissioners court or governing body of the municipality shall consider the height, width, and slope of the dune, any significant environmental features of the dune, the feasibility and desirability of restoration of vegetation, and cumulative impacts and shall consider requirements for protection of critical dune areas.

(c) Each county or municipality administering this chapter shall establish procedures and requirements governing the review and approval of dune permits, and these procedures and requirements shall be submitted to the commissioner for certification to determine whether the procedures and requirements are in compliance with rules and policies adopted under Section 63.121. The commissioner shall act on a county or municipality's proposed dune protection plan not later than the 90th day after the date the plan is submitted by approving the plan or denying certification. If certification is denied, the commissioner shall return the proposed plan to the originating local government with a statement of specific objections and the reasons for denial, along with suggested modifications. On receipt, the county or municipality shall revise and resubmit the plan. The commissioner must certify a county or municipality's procedures and requirements under this section in accordance with rules adopted under Section 63.121.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 24, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 7, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 16, eff. September 1, 2007.

Sec. 63.055. TERMS AND CONDITIONS OF PERMIT. The commissioners court or governing body of the municipality may include in a permit the terms and conditions it finds necessary to assure the protection of life, natural resources, and property.

Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 25, eff. June 7, 1991.

Sec. 63.056. NOTICE TO AND COMMENTS OF COMMISSIONER ON PERMITS. (a) After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with small-scale construction activity that includes 5,000 square feet or less or habitable structures two stories in height or less, the commissioners court or the governing body of the municipality shall notify the

commissioner by sending, not less than 10 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application. After receiving an application for a permit to perform any of the acts prohibited in Section 63.091 in connection with large-scale construction activity that includes more than 5,000 square feet or habitable structures more than two stories in height, the commissioners court or the governing body of the municipality shall notify the commissioner by sending, not less than 30 working days before the date of the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 26, eff. June 7, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 17, eff. September 1, 2007.

Sec. 63.057. PERMIT FOR CERTAIN ACTIVITY PROHIBITED. (a) No permit may be issued that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

(b) No permit may be issued that allows any activity in a critical dune area inconsistent with rules promulgated by the commissioner for protection of critical dune areas.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 27, eff. June 7, 1991.

SUBCHAPTER D. PROHIBITIONS

Sec. 63.091. CONDUCT PROHIBITED. Unless a permit is properly issued authorizing the conduct, no person may damage, destroy, or remove a sand dune or portion of a sand dune seaward of a dune protection line or within a critical dune area or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of a dune protection line or within a critical dune area.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 814, Sec. 3, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., ch. 295, Sec. 28, eff. June 7, 1991.

Sec. 63.093. PROHIBITED OPERATION OF RECREATIONAL VEHICLES. No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established.

Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. CRITICAL DUNE AREAS

Sec. 63.121. IDENTIFICATION OF CRITICAL DUNE AREAS; RULES. (a) The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas within 1,000 feet of mean high tide that are essential to the protection of state-owned land, public beaches, and submerged land.

(b) The commissioner shall promulgate rules for:

(1) the identification and protection of critical dune areas; and

(2) the certification of procedures and requirements governing the review and approval of dune permits by a county or municipality.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 18, eff. September 1, 2007.

Sec. 63.122. NOTICE TO COUNTIES. After the commissioner has identified the critical dune areas, notice of the critical dune areas and the rules for their protection shall be given to the commissioners court of each county and the governing body of each municipality in which one or more of these areas is located.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 30, eff. June 7, 1991.

SUBCHAPTER F. APPEALS

Sec. 63.151. APPEAL BY LITTORAL OWNER. A littoral owner aggrieved by a decision of the commissioners court or governing body of the municipality under this chapter may appeal to a district court in that county.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

Sec. 63.152. APPEAL BY COMMISSIONER. The commissioner may appeal to a district court of that county any decision of the commissioners court or governing body of the municipality that the commissioner determines to be a violation of this chapter.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 31, eff. June 7, 1991.

SUBCHAPTER G. PENALTIES

Sec. 63.181. ENFORCEMENT. (a) Any county attorney, district attorney, or criminal district attorney, or the attorney general at the request of the commissioner, shall file in a district court of Travis County or in the county in which the violation occurred a suit to obtain either a temporary or permanent court order or injunction to prohibit and remedy any violation of this chapter or any rule, permit, or order under this chapter and to collect damages to natural resources injured by the violation and to recover civil penalties.

(b) A person who violates this chapter or any rule, permit, or order under this chapter is liable for a civil penalty of not less than $50 nor more than $2,000. Each day that a violation occurs or continues constitutes a separate offense. A violation of Section 63.091 is considered to be a continuing violation from the date of the initial unauthorized conduct until the earlier of:

(1) the date on which a proper permit is issued authorizing the conduct; or

(2) the date on which restoration of dunes or dune vegetation damaged by the violation is completed.

Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 295, Sec. 32, eff. June 7, 1991; Acts 2003, 78th Leg., ch. 245, Sec. 8, eff. June 18, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 19, eff. September 1, 2007.

Sec. 63.1811. ADMINISTRATIVE PENALTY. The commissioner may assess an administrative penalty for a violation of Section 63.091 or any rule, permit, or order issued under this chapter in the amount established by Section 63.181(b) for a civil penalty. In determining the amount of the penalty, the commissioner shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation and the hazard or damage caused thereby;

(2) the degree of cooperation and quality of response;

(3) the degree of culpability and history of previous violations by the person subject to the penalty;

(4) the amount necessary to deter future violations; and

(5) any other matter that justice requires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1812. ENFORCEMENT PROVISIONS CUMULATIVE. This subchapter is cumulative of all other applicable penalties, remedies, and enforcement and liability provisions.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1813. MITIGATION FOR DAMAGE, DESTRUCTION, OR REMOVAL OF DUNE OR DUNE VEGETATION WITHOUT PERMIT. (a) The commissioner may

order restoration for the damage, destruction, or removal of a sand dune or a portion of a sand dune or the killing, destruction, or removal of any vegetation growing on a sand dune seaward of the dune protection line or within a critical dune area in violation of this chapter or any rule, permit, or order issued under this chapter.

(b) The decision to require restoration under this section is discretionary with the commissioner. This section does not impose a duty on the state to order restoration.

(c) The commissioner may contract for the restoration required under this section and may pay the costs of restoration from money appropriated by the legislature.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

Sec. 63.1814. NOTICE REQUIREMENTS; ORDERS AND HEARINGS. (a) The commissioner shall assess an administrative penalty and pursue restoration in accordance with this section.

(b) Before the commissioner may order restoration under Section 63.1813 or assess an administrative penalty under Section 63.1811, the commissioner must give written notice to a person who is taking or has taken actions that violate Section 63.091 or any rule, permit, or order issued under this chapter. The notice must state:

(1) the specific conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter;

(2) that the person who is engaged in or has been engaged in the conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter must perform restoration for the damage caused by the violation not later than the 60th day after the date on which the notice is served;

(3) that failure to perform restoration for the damage caused by the violation in accordance with the commissioner's order may result in liability for a civil penalty under Section 63.181(b) in an amount specified, restoration contracted or undertaken by the commissioner and liability for the costs of restoration, or any combination of those remedies; and

(4) that the person who is engaging in or has engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter may submit, not later than the 60th day

after the date on which the notice is served, a written request for a hearing.

(c) A person is considered to be engaging in or to have engaged in conduct that violates Section 63.091 or any rule, permit, or order issued under this chapter for purposes of this section if the person is the person who most recently owned, maintained, controlled, or possessed the real property on which the conduct occurred.

(d) The notice required by Subsection (b) must be given:

(1) by service in person, by registered or certified mail, return receipt requested, or by priority mail; or

(2) if personal service cannot be obtained or the address of the person responsible is unknown, by posting a copy of the written notice at the site where the conduct was engaged in and by publishing notice in a newspaper with general circulation in the county in which the site is located at least two times within 10 consecutive days.

(e) The commissioner by rule may adopt procedures for a hearing under this section.

(f) The commissioner must grant a hearing before an administrative law judge employed by the State Office of Administrative Hearings if a hearing is requested. A person who does not request a hearing within 60 days after the date on which the notice is served waives all rights to judicial review of the commissioner's findings or orders and shall immediately initiate mitigation and pay any penalty assessed. If a hearing is held, the commissioner may issue a final order approving the proposal for decision submitted by the administrative law judge concerning mitigation and payment of a penalty. The commissioner may change a finding of fact or conclusion of law made by the administrative law judge, or may vacate or modify an order issued by the administrative law judge in accordance with Section 2001.058, Government Code.

(g) A person may seek judicial review of a final order of the commissioner under this section in a Travis County district court under the substantial evidence rule as provided by Subchapter G, Chapter 2001, Government Code. The trial courts of this state shall give preference to an appeal of a final order of the commissioner under this section in the same manner as provided by Section 23.101(a), Government Code, for an appeal of a final order of the commissioner under Section 51.3021 of this code.

(h) If the person who is engaged in or has been engaged in

conduct that violated Section 63.091 or any rule, permit, or order issued under this chapter does not pay assessed penalties, mitigation costs, and other assessed fees and expenses on or before the 60th day after the date of entry of a final order assessing the penalties, costs, and expenses, the commissioner may:

(1) request that the attorney general institute civil proceedings to collect the penalties, costs of restoration, and other fees and expenses remaining unpaid; or

(2) use any combination of the remedies prescribed by this section, or other remedies authorized by law, to collect the unpaid penalties, costs of restoration, and other fees and expenses assessed because of unauthorized conduct and its mitigation by the commissioner.

(i) Penalties or costs collected under this section shall be deposited in the coastal erosion response account established under Section 33.604.

Added by Acts 2007, 80th Leg., R.S., Ch. 1256 (H.B. 2819), Sec. 20, eff. September 1, 2007.

SUBTITLE F. LAND OF POLITICAL SUBDIVISIONS
CHAPTER 71. LEASE FOR MINERAL DEVELOPMENT
SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

Sec. 71.001. DEFINITION. In this subchapter, "political subdivision" means any body corporate with a recognized and defined area.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.002. AUTHORITY TO LEASE. A political subdivision may lease land owned by it for mineral development, including development of coal and lignite.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.003. GOVERNING BODY TO EXERCISE AUTHORITY. The

governing body of the political subdivision which is vested by law with management, control, and supervision of the political subdivision shall exercise the right to lease the land.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.004. NOTICE AND HEARING. Before a lease is made under this subchapter, notice must be given and a public hearing must be held for consideration of bids.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.005. NOTICE OF INTENTION TO LEASE LAND. (a) After the governing body determines that it is advisable to lease land belonging to the political subdivision, it shall give notice of the intention to lease the land.

(b) The notice shall describe the land to be leased and designate the time and place at which the governing body will receive and consider bids for the lease.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper published in the county and with general circulation in the county.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.006. RECEIVING BIDS AND AWARDING LEASE. On the date specified in the notice, the governing body of the political subdivision shall receive and consider bids submitted for leasing all or part of the land that was advertised for lease, and the governing body may award the lease to the highest and best bidder who submits a bid.

Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.007. REJECTION OF BIDS AND ADDITIONAL BIDS. If the governing body believes that the bids submitted to it do not represent the fair value of the leases, the governing body may reject the bids, give notice, and call for additional bids.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.008. GRANT OF LEASE. A lease made under this subchapter, including leases for coal and lignite, may be granted by public auction.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.009. ROYALTY. (a) In each lease other than a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a one-eighth royalty.

(b) In a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a royalty based on one of the following or a combination of the following:

(1) a sum certain per ton;

(2) a percentage certain of the gross sale price F.O.B. at the mine site of the coal and lignite; or

(3) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

(c) Royalties under a coal and lignite lease may be paid as advanced mineral royalties.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.010. LEASE TERM. (a) No primary term of a lease other than a lease for coal and lignite made under this subchapter may be for a period of more than 10 years from the date of the execution and approval of the lease.

(b) No primary term for a coal and lignite lease made under this subchapter may be for a period of more than 35 years from the

date of execution.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POOLING MINERAL LEASES

Sec. 71.051. DEFINITIONS. In this subchapter:

(1) "City or town" means a city or town organized or chartered under the general laws of the state or under a special act or charter.

(2) "Political subdivision" means a body corporate which has a recognized and defined area.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.052. INSERTING POOLING PROVISIONS IN LEASES. A city, town, or political subdivision may insert in an oil and gas lease or in an oil, gas, and mineral lease executed by it a provision authorizing the lessee to pool the lease, the land or minerals included in the lease, or any part of these with any other land, leases, mineral estates, or parts of any of these to form a drilling or spacing unit for the exploration, development, and production of oil or gas and authorizing the lessee to form the units and accomplish the pooling by written designations filed in the county in which the land is located.

Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.053. COMPLIANCE WITH GOVERNMENTAL AGENCIES. With respect to land owned by the city or town or other land owned by the political subdivisions, the drilling or spacing units may not be more than the minimum number of acres on which an oil and gas well must be located to comply with the rules or orders of the Railroad Commission of Texas or any other federal or state regulatory body that has authority to control or regulate the spacing of oil and gas wells.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.054. TERMS AND CONDITIONS OF LEASES OF COUNTY SCHOOL LAND. Leases of county school land that are governed by Article VII, Section 6, of the Texas Constitution, may include authorization for the formation of drilling and spacing units on any terms and provisions the commissioners court considers best.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.055. ADDITIONAL TERMS OF LEASES. A lease covered by this subchapter may provide:

(1) that the entire acreage pooled into a unit shall be treated for all purposes except the payment of royalties as if it were included in the lease and drilling or reworking operations and production of oil or gas on any part of the unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and

(2) that instead of the royalties provided in the lease, the lessor shall receive on production from a pooled unit only the proportion of the royalty provided in the lease as the amount of the lessor's acreage placed in the unit or its royalty interest on an acreage basis bears to the total acreage included in the unit.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.056. AMENDING LEASE. On application of the lessee or present owner of any oil and gas lease or any oil, gas, and mineral lease validly executed before June 4, 1953, by any city, town, or political subdivision, the governing body of the city, town, or political subdivision may amend the lease to include a pooling provision that includes the terms provided in this subchapter.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 71.057. AUTHORITY TO COMMIT ROYALTY INTERESTS. (a) A city, town, or political subdivision without notice may commit, to any agreement that provides for the operation of areas as a unit for the exploration, development, and production of oil or gas, any royalty interests owned by the city, town, or political subdivision in oil or gas.

(b) The agreement may include any terms and provisions that the city, town, or political subdivision considers best and may provide in substance:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be the conduct of the operation on each separately owned tract in the unit by the several owners of the tracts;

(2) that the production allocated to each tract included in a unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on it;

(3) that any lease that covers any part of the area committed to the agreement shall continue in force as long as oil or gas is produced in paying quantities from any part of the unit area; and

(4) that royalties reserved to the city, town, or political subdivision from any tract or portion of a tract included within the unit shall be paid only on that portion of the production allocated to the tract or on the value of the production allocated according to the agreement.

(c) No agreement may be made by any city, town, or political subdivision which commits the city, town, or political subdivision to the payment of any part of the cost or expense of operating any unit area or any well located on the area.

Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

TITLE 3. OIL AND GAS
SUBTITLE A. ADMINISTRATION

CHAPTER 81. RAILROAD COMMISSION OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 81.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commissioner" means any member of the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.002. DEFINITION OF PERSON FOR CERTAIN PROVISIONS. In this chapter:

(1) "person" includes a corporation, as provided by Section 312.011, Government Code; and

(2) the definition of "person" assigned by Section 311.005, Government Code, does not apply.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.01, eff. April 1, 2011.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 81.01001. SUNSET PROVISION. (a) The Railroad Commission of Texas is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2029.

(b) The Railroad Commission of Texas shall pay the costs incurred by the Sunset Advisory Commission in performing a review of the commission under this section. The Sunset Advisory Commission shall determine the costs, and the commission shall pay the amount of those costs promptly on receipt of a statement from the Sunset Advisory Commission detailing the costs.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Amended by:

Acts 2009, 81st Leg., 1st C.S., Ch. 2 (S.B. 2), Sec. 1.14(b), eff. July 10, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1232 (S.B. 652), Sec. 1.07(a), eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1279 (H.B. 1675), Sec. 2.05, eff. June 14, 2013.

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 1, eff. September 1, 2017.

Sec. 81.01002. CHAIRMAN. The commissioners shall elect one commissioner as the chairman.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01003. QUALIFICATIONS FOR OFFICE. A commissioner must be:

(1) a qualified voter under the constitution and laws; and

(2) at least 25 years of age.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01004. PERSONAL FINANCIAL DISCLOSURE, STANDARDS OF CONDUCT, AND CONFLICT OF INTEREST. A commissioner is subject to the provisions of Chapter 572, Government Code, that apply to elected officers, including the requirements governing personal financial statements, standards of conduct, and conflicts of interest.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01005. NAME AND SEAL. (a) The commissioners are known collectively as the "Railroad Commission of Texas."

(b) The seal of the commission contains a star of five points with the words "Railroad Commission of Texas" engraved on it.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01006. PROCEDURAL RULES. The commissioners may adopt all rules necessary for the commission's government and proceedings.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01007. SUPPLIES. The commissioners shall be furnished necessary furniture, stationery, supplies, and expenses, to be paid for on the order of the governor.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01008. SESSIONS. The commission may hold sessions at any place in this state when considered necessary.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01009. RECORDS RESEARCH FEE. The commission shall charge a person who requests an examination or search of commission records $5 for each half hour or fraction of a half hour that a commission employee spends in the examination or search unless the person requesting the search represents this state or a county.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01010. FEE FOR COPIES. (a) The commission may charge a fee for copies of papers provided by the commission to a person other than a department of this state.

(b) The fee for a copy of a paper, document, or record in the commission's office, including the certificate and seal to be applied by the secretary, is 15 cents for each 100 words.

(c) This section does not authorize the commission to charge a person a fee for a tariff sheet for the person's own use if the tariff sheet is in effect.

(d) The fees charged and collected under this section shall be accounted for by the secretary of the commission and paid into the treasury as provided by Chapter 603, Government Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01011. METHOD OF MAKING PAYMENTS TO COMMISSION. (a) The commission may authorize payment, as prescribed by the commission, of a regulatory fee, fine, penalty, or charge for goods and services by means of an electronic payment method or a credit card issued by a financial institution chartered by a state or the United States or issued by a nationally recognized credit organization approved by the commission. A payment by the authorized method may be made in person, by telephone, or through the Internet.

(b) The commission may require a person who makes a payment to the commission by means of an electronic payment method or credit card to pay a discount or service charge in an amount reasonable and necessary to reimburse the commission for the costs involved in processing the payment.

(c) The commission may adopt rules as necessary to implement this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01012. GIFTS, GRANTS, AND DONATIONS. (a) In this section, "contested case" has the meaning assigned by Section 2001.003, Government Code.

(b) The commission may apply for, request, solicit, contract for, receive, accept, and administer gifts, grants, and donations of money or other assistance from any source to carry out any commission purpose or power.

(c) The commission may not, under Subsection (b), accept a gift or donation of money or of property from a party in a contested case during the period from the inception of the contested case until the 30th day after the date a final order is signed in the contested case.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01013. CONFLICT OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an employee of the commission employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in a business or industry regulated by the commission; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in a business or industry regulated by the commission.

(c) A person who is required to register as a lobbyist under Chapter 305, Government Code, may not act as the general counsel to the commission.

(d) The commission shall provide to commissioners and to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01014. EQUAL EMPLOYMENT OPPORTUNITY. (a) The commission shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the commission to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the commission's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the Texas Workforce Commission civil rights division for compliance with Subsection (b); and

(3) be filed with the governor's office.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.01016. SEPARATION OF RESPONSIBILITIES. The commission shall develop and implement policies that clearly separate the policy-making responsibilities of the commissioners and the management responsibilities of the staff of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.011. CHIEF SUPERVISOR. (a) The commission shall employ a chief supervisor of its oil and gas division to assist the commission in enforcing the laws relating to the production, transportation, and conservation of oil and gas and rules and orders of the commission adopted under these laws.

(b) The chief supervisor also shall perform the duties of the pipeline expert as provided in the pipeline laws of this state.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.012. QUALIFICATIONS OF CHIEF SUPERVISOR. In addition to other qualifications that may be required by the commission, a person appointed chief supervisor must have had at least five years' experience in some line of the oil or gas business, or in some other business or profession that would provide the necessary knowledge and experience for the performance of his duties.

Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.013. DEPUTY SUPERVISORS, ASSISTANTS, AND CLERICAL PERSONNEL. The commission may appoint a chief deputy supervisor, deputy supervisors, assistants, and clerical personnel necessary to execute the laws relating to oil and gas.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.014. QUALIFICATIONS OF CHIEF DEPUTY SUPERVISOR. A person appointed chief deputy supervisor must have had at least three years' experience in oil and gas field work.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.015. QUALIFICATIONS OF DEPUTY SUPERVISORS. Any person appointed deputy supervisor must have had at least two years' experience in oil and gas field work, including substantial experience in drilling or production.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.016. SALARIES. The salary of the chief supervisor, the chief deputy supervisor, and the deputy supervisors shall be the same as that provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.0165. SALARY OF SECRETARY. The salary of the secretary of the commission shall be the amount appropriated for that purpose by the legislature.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.02, eff. April 1, 2011.

Sec. 81.017. ADDITIONAL EMPLOYEES. The commission may employ gaugers, inspectors, investigators, supervisors, and clerical employees. These employees shall include a chief engineer, chief petroleum engineer, and an administrative chief, and their salaries shall be paid in the amounts provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 1, eff. Sept. 1, 1981.

Sec. 81.018. PAYMENT OF SALARIES AND OTHER EXPENSES. (a) Salaries and other expenses necessary in the administration and enforcement of the oil and gas laws shall be paid by warrants drawn by the comptroller on the State Treasury from general revenue.

(b) Warrants for expenses shall be issued only on duly verified statements of the persons entitled to the funds and on approval of the chairman of the commission.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 3, eff. September 1, 2015.

Sec. 81.019. DUTIES OF CHIEF SUPERVISOR, CHIEF DEPUTY SUPERVISOR, DEPUTY SUPERVISORS, AND OTHER EMPLOYEES. The chief

supervisor, chief deputy supervisor, deputy supervisors, and other employees shall perform the duties prescribed by the commission in conformity with rules of the commission relating to the production, transportation, and conservation of crude oil and natural gas.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.020. ADDITIONAL DUTIES OF CHIEF SUPERVISOR AND HIS DEPUTIES. (a) The chief supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and shall follow the rules of the commission relating to the production and conservation of oil and gas.

(b) The chief supervisor shall gather information and assist the commission in the performance of its duties under this title.

Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.021. INTELLECTUAL PROPERTY. (a) The commission may:

(1) apply for, register, secure, hold, and protect under the laws of the United States or any state or nation:

(A) a patent for the invention, discovery, or improvement of any process, machine, manufacture, or composition of matter;

(B) a copyright for an original work of authorship fixed in any tangible medium of expression, known or later developed, from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device;

(C) a trademark, service mark, collective mark, or certification mark for a word, name, symbol, device, or slogan that the commission uses to identify and distinguish the commission's goods and services from other goods and services; or

(D) other evidence of protection or exclusivity issued for intellectual property;

(2) contract with a person for the sale, lease, marketing, or other distribution of the commission's intellectual property;

(3) obtain under a contract described in Subdivision (2) a royalty, license right, or other appropriate means of securing

reasonable compensation for the development or purchase of the commission's intellectual property; and

(4) waive or reduce the amount of compensation secured by contract under Subdivision (3) if the commission determines that the waiver or reduction will:

(A) further a goal or mission of the commission; and

(B) result in a net benefit to the state.

(b) Money paid to the commission under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 2017, 85th Leg., R.S., Ch. 72 (S.B. 1422), Sec. 1, eff. May 22, 2017.

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

Sec. 81.051. JURISDICTION OF COMMISSION. (a) The commission has jurisdiction over all:

(1) common carrier pipelines defined in Section 111.002 of this code in Texas;

(2) oil and gas wells in Texas;

(3) persons owning or operating pipelines in Texas; and

(4) persons owning or engaged in drilling or operating oil or gas wells in Texas.

(b) Persons listed in Subsection (a) of this section and their pipelines and oil and gas wells are subject to the jurisdiction conferred by law on the commission.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 5, eff. Sept. 1, 1977.

Sec. 81.052. RULES. The commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission as set forth in Section 81.051, including such rules as the commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1979, 66th Leg., p. 19, ch. 12, Sec. 1, eff. March 15, 1979.

Sec. 81.0521. FEE FOR APPLICATION FOR EXCEPTION TO RAILROAD COMMISSION RULE. (a) With each application for an exception to any commission rule contained in Chapter 3 of Part I of Title 16 of the Texas Administrative Code, the applicant shall submit to the commission a fee of $150.

(b) The application fee for an exception to any commission rule may not be refunded.

(c) The proceeds from this fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 3, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.01, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 26, eff. September 1, 2015.

Sec. 81.0522. NATURAL GAS POLICY ACT APPLICATION FEE. (a) With each Natural Gas Policy Act (15 U.S.C. Sections 3301-3432) application, the applicant shall submit to the commission a fee. The commission shall set the application fee in an amount necessary to cover the cost of the commission's well category determination program but not to exceed $150.

(b) The fee for any Natural Gas Policy Act application may not be refunded.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 73, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 4, eff. Sept. 1, 2001.

Sec. 81.0523. EXCLUSIVE JURISDICTION AND EXPRESS PREEMPTION. (a) In this section:

(1) "Commercially reasonable" means a condition that would allow a reasonably prudent operator to fully, effectively, and economically exploit, develop, produce, process, and transport oil and gas, as determined based on the objective standard of a reasonably prudent operator and not on an individualized assessment of an actual operator's capacity to act.

(2) "Oil and gas operation" means an activity associated with the exploration, development, production, processing, and transportation of oil and gas, including drilling, hydraulic fracture stimulation, completion, maintenance, reworking, recompletion, disposal, plugging and abandonment, secondary and tertiary recovery, and remediation activities.

(b) An oil and gas operation is subject to the exclusive jurisdiction of this state. Except as provided by Subsection (c), a municipality or other political subdivision may not enact or enforce an ordinance or other measure, or an amendment or revision of an ordinance or other measure, that bans, limits, or otherwise regulates an oil and gas operation within the boundaries or extraterritorial jurisdiction of the municipality or political subdivision.

(c) The authority of a municipality or other political subdivision to regulate an oil and gas operation is expressly preempted, except that a municipality may enact, amend, or enforce an ordinance or other measure that:

(1) regulates only aboveground activity related to an oil and gas operation that occurs at or above the surface of the ground, including a regulation governing fire and emergency response, traffic, lights, or noise, or imposing notice or reasonable setback requirements;

(2) is commercially reasonable;

(3) does not effectively prohibit an oil and gas operation conducted by a reasonably prudent operator; and

(4) is not otherwise preempted by state or federal law.

(d) An ordinance or other measure is considered prima facie to be commercially reasonable if the ordinance or other measure has been in effect for at least five years and has allowed the oil and gas operations at issue to continue during that period.

Added by Acts 2015, 84th Leg., R.S., Ch. 30 (H.B. 40), Sec. 2, eff. May 18, 2015.

Sec. 81.053. COMMISSION POWERS. In the discharge of its duties and the enforcement of its jurisdiction under this title, the commission shall:

(1) institute suits;

(2) hear and determine complaints;

(3) require the attendance of witnesses and pay their expenses out of funds provided for that purpose;

(4) obtain the issuance of writs and process which may be necessary for the enforcement of its orders; and

(5) punish for contempt or disobedience of its orders in the manner provided for the district courts.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.0531. ADMINISTRATIVE PENALTY. (a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed:

(1) $10,000 a day for each violation that is not related to pipeline safety; or

(2) $200,000 a day for each violation that is related to pipeline safety.

(b-1) Each day a violation continues may be considered a separate violation for purposes of penalty assessments, provided that the maximum penalty that may be assessed for any related series of violations related to pipeline safety may not exceed $2 million.

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. In determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety, the commission shall consider the guidelines adopted under Subsection (d).

(d) The commission by rule shall adopt guidelines to be used in

determining the amount of the penalty for a violation of a provision of this title or a rule, order, license, permit, or certificate that relates to pipeline safety. The guidelines shall include a penalty calculation worksheet that specifies the typical penalty for certain violations, circumstances justifying enhancement of a penalty and the amount of the enhancement, and circumstances justifying a reduction in a penalty and the amount of the reduction. The guidelines shall take into account:

(1) the permittee's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the commission considers relevant.

(e) A penalty collected under this section shall be deposited to the credit of the oil-field cleanup fund.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1999, 76th Leg., ch. 1089, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 1, eff. September 1, 2013.

Sec. 81.0532. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 81.0531 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings.

(d) If the person charged with the violation fails to avail

himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983.

Sec. 81.0533. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the commission shall inform the person charged within 30 days of the amount of the penalty.

(b) Within the 30-day period immediately following the day on which the decision or order is final as provided in Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the commission a supersedeas bond in a form approved by the commission for the amount of the penalty, such bond to be effective until all judicial review of the order or decision is final.

(c) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Judicial review of the order or decision of the commission

assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Subchapter G, Chapter 2001, Government Code.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 81.0534. RECOVERY OF PENALTY. Civil penalties owed under Sections 81.0531-81.0533 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1407, ch. 286, Sec. 1, eff. Sept. 1, 1983.

Sec. 81.054. ENFORCEMENT BY ATTORNEY GENERAL. (a) The attorney general shall enforce the provision of this title by injunction or other adequate remedy and as otherwise provided by law.

(b) If an action is instituted by the attorney general under this section alleging a violation of an NPDES permit or the failure to obtain an NPDES permit under Chapter 91 or Chapter 141 of the Natural Resources Code, the attorney general may not oppose intervention by a person who has standing to intervene, as provided by Rule 60, Texas Rules of Civil Procedure.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 5, eff. Aug. 28, 1995.

Sec. 81.055. PIPELINE SYSTEM FINANCIAL RESPONSIBILITY REQUIREMENTS. (a) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(132), eff. June 17, 2011.

(b) If the legislature finds that adoption of such a requirement is desirable, the commission by rule may require an owner, operator, or manager of a pipeline system to obtain evidence of financial responsibility. The rules must specify the appropriate

form and amount of that evidence and may require evidence of financial responsibility in different amounts for different pipeline systems, taking into consideration whether the pipeline system:

(1) has a history of discharges or other violations of regulatory requirements; or

(2) is located over a public drinking water supply, a natural resource, or a critical groundwater resource or near a school or populated area.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 6, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(132), eff. June 17, 2011.

Sec. 81.056. CONTAMINATION REPORT. (a) In this section:

(1) "Common carrier" has the meaning assigned by Section 111.002.

(2) "Owner of the land" or "landowner" means the first person who is shown on the appraisal roll of the appraisal district established for the county in which a tract of land is located as owning an interest in the surface estate of the land at the time a contamination report is required to be made under this section.

(b) If in the process of placing, repairing, replacing, or maintaining a pipeline a common carrier or an owner or operator of a pipeline observes or detects any petroleum-based contamination of soil or water in proximity to the pipeline, the common carrier or pipeline owner or operator shall report the contamination to the commission and the owner of the land on which the pipeline is located. Petroleum-based contamination of soil or water that is observed or detected is required to be reported under this subsection if:

(1) hydrocarbons are present on the surface of the water;

(2) at least five linear yards of soil have been affected by hydrocarbons; or

(3) soil affected by hydrocarbons extends beyond the face of the excavation in which the contamination is observed or detected.

(c) The contamination report:

(1) must be made not later than 24 hours after the common carrier or pipeline owner or operator observes or detects the

contamination;

(2) must include the global positioning satellite coordinates of the location of the contamination; and

(3) may be made by telephone, facsimile, or electronic mail.

(d) Not later than the third business day after the date the commission receives the contamination report, a person authorized by the commission shall withdraw a soil sample from the contaminated land. The person is entitled to enter the land for the purpose of withdrawing the sample.

(e) A common carrier or pipeline owner or operator that makes a contamination report under this section is released from all liability for the contamination or the cleanup of the contamination covered by the report, except for any contamination caused by the common carrier or pipeline owner or operator.

(f) The commission shall adopt rules to implement this section.

(g) The commission may use money in the oil-field cleanup fund to implement this section. The amount of money in the fund the commission may use for that purpose may not exceed the amount of money in the fund that is derived from fees collected under Section 91.142 from common carriers or owners or operators of pipelines as determined annually by the commission.

Added by Acts 2005, 79th Leg., Ch. 339 (S.B. 1130), Sec. 1, eff. September 1, 2005.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 166 (H.B. 472), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 166 (H.B. 472), Sec. 2, eff. September 1, 2009.

Sec. 81.057. EXEMPTION FROM CERTAIN PURCHASING RULES. The commission is not required to follow any purchasing procedures prescribed by or under Subchapter E, Chapter 2155, Government Code, when the commission makes a purchase in connection with the remediation of surface locations or well plugging.

Added by Acts 2003, 78th Leg., ch. 1272, Sec. 2, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 514 (H.B. 773), Sec. 2, eff. September

1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 393 (H.B. 1705), Sec. 3.06, eff. September 1, 2009.

Sec. 81.058. ADMINISTRATIVE PENALTY FOR CERTAIN NATURAL GAS-RELATED ACTIVITIES. (a) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas, a person described by Section 81.051(a) or 111.081(a), or any other entity under the jurisdiction of the commission under this code that the commission determines has:

(1) violated a commission rule adopting standards or a code of conduct for entities in the natural gas industry prohibiting unlawful discrimination; or

(2) unreasonably discriminated against a seller of natural gas in the purchase of natural gas from the seller.

(b) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, or gatherer of natural gas if the commission determines that the person engaged in prohibited discrimination against a shipper or seller of natural gas because the shipper or seller filed a formal or informal complaint with the commission against the person relating to the person's purchase, transportation, or gathering of the gas.

(c) The commission, after notice and opportunity for hearing, may impose an administrative penalty against a purchaser, transporter, gatherer, shipper, or seller of natural gas who is a party to an informal complaint resolution proceeding and is determined by the commission to have:

(1) failed to participate in the proceeding; or

(2) failed to provide information requested by a mediator in the proceeding.

(d) An administrative penalty imposed under this section may not exceed $5,000 a day for each violation. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty under this section.

(e) If the commission determines after notice and opportunity for hearing that an entity has engaged in prohibited discrimination for which a penalty may be imposed under this section, the commission

may issue any order necessary and reasonable to prevent the discrimination from continuing.

(f) The remedy provided by this section is cumulative of any other remedy the commission may order.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.059. APPOINTMENT OF MEDIATORS FOR INFORMAL COMPLAINTS. (a) The commission may provide for the appointment of a commission staff member as the mediator of an informal complaint filed with the commission, or the parties may agree to employ and pay an independent mediator for the purpose of mediating the complaint.

(b) If the parties request that the mediation be conducted at a location other than the offices of the commission in Austin, the parties shall reimburse the commission for the commission's costs related to travel to those other locations.

(c) This section does not prohibit the commission from requiring that the parties participate in a formal complaint resolution proceeding.

(d) At least annually, the commission shall notify oil and gas producers of the existence of any informal complaint resolution process provided for by the commission.

(e) Filing an informal complaint is not a prerequisite for filing a formal complaint.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.0591. COMPLAINTS. (a) The commission shall maintain a file on each written complaint filed with the commission. The file must include:

(1) the name of the person who filed the complaint;

(2) the date the complaint is received by the commission;

(3) the subject matter of the complaint;

(4) the name of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) an explanation of the reason the file was closed, if the commission closed the file without taking action other than to investigate the complaint.

(b) The commission shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution.

(c) The commission, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.0592. CONSUMER INTEREST INFORMATION. (a) The commission shall prepare information of consumer interest describing the regulatory functions of the commission and the procedures by which consumer complaints are filed with and resolved by the commission.

(b) The commission shall make the information available to the public and appropriate state agencies.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.060. CONFIDENTIALITY PROVISIONS. (a) A confidentiality provision may not be required in a contract to which a producer is a party for the sale, transportation, or gathering of natural gas that is entered into on or after September 1, 2007.

(b) A confidentiality provision in a contract to which a producer is a party for the sale, transportation, or gathering of natural gas that was entered into before September 1, 2007, becomes unenforceable on the date the term of the contract expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.061. AUTHORITY TO ESTABLISH MARKET-BASED RATES. (a) This section does not apply to rates established under Chapter 103, Utilities Code, or Subchapter C or G, Chapter 104, of that code.

(b) The commission may use a cost-of-service method or a market-based rate method in setting a rate in a formal rate proceeding.

(c) On the filing of a complaint by a shipper or seller of natural gas, the commission may set a transportation or gathering rate in a formal rate proceeding if the commission determines that the rate is necessary to remedy unreasonable discrimination in the provision of transportation or gathering services. The commission may set a rate regardless of whether the transporter or gatherer is classified as a utility by other law.

Added by Acts 2007, 80th Leg., R.S., Ch. 757 (H.B. 3273), Sec. 1, eff. September 1, 2007.

Sec. 81.062. PUBLIC PARTICIPATION. The commission shall develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.063. ISSUANCE, SUSPENSION, OR REVOCATION OF LICENSE, PERMIT, OR CERTIFICATE. (a) If the commission proposes to suspend or revoke a person's license, permit, or certificate of public convenience and necessity, the person is entitled to a hearing before the commission.

(b) The commission may not:

(1) refuse to issue a license, permit, or certificate to a person because of the person's race, religion, color, sex, or national origin; or

(2) revoke or suspend the license, permit, or certificate of a person because of the person's race, religion, color, sex, or national origin.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03,

eff. April 1, 2011.

Sec. 81.064. POWERS OF COMMISSIONER OR DESIGNATED EMPLOYEE IN CASES BEFORE COMMISSION. (a) In a case before the commission, a commissioner, or an authorized commission employee, designated by the commission for that purpose, in the same manner as if the entire commission were present, may:

(1) hold a hearing;

(2) conduct an investigation;

(3) make a record of a hearing or investigation for the use and benefit of the commission;

(4) administer an oath;

(5) certify to an official act; and

(6) compel the attendance of a witness and the production of papers, books, accounts, and other pertinent documents and testimony.

(b) The record of a hearing or investigation made under this section that is certified to by the commissioner or employee has the same effect as if made before the commission. The commission shall determine a case in which the record is made under this section in the same manner as if the record had been made before the commission.

(c) The commission may punish for contempt a person who:

(1) refuses to comply with this section; or

(2) obstructs or attempts to obstruct a proceeding under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.03, eff. April 1, 2011.

Sec. 81.065. ALTERNATIVE DISPUTE RESOLUTION POLICY. (a) The commission shall develop and implement a policy to encourage the use of appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the commission's jurisdiction.

(b) The commission's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The commission shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for alternative dispute resolution; and

(3) collect information concerning the effectiveness of those procedures.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 2, eff. September 1, 2017.

Sec. 81.066. OIL AND GAS DIVISION MONITORING AND ENFORCEMENT STRATEGIC PLAN. (a) The oil and gas division of the commission shall develop and publish an annual plan for each state fiscal year to use the oil and gas monitoring and enforcement resources of the commission strategically to ensure public safety and protect the environment.

(b) The commission shall seek input from stakeholders when developing each annual plan.

(c) The commission shall collect and maintain information that accurately shows the commission's oil and gas monitoring and enforcement activities. Each annual plan must include a report of the information collected by the commission that shows the commission's oil and gas monitoring and enforcement activities over time.

(d) The information described by Subsection (c) must include data regarding violations of statutes or commission rules that relate to oil and gas, including:

(1) the number, type, and severity of:

(A) violations the commission found to have occurred;

(B) violations the commission referred for enforcement to the section of the commission responsible for enforcement; and

(C) violations for which the commission imposed a penalty or took other enforcement action;

(2) the number of major violations for which the commission imposed a penalty or took other enforcement action; and

(3) the number of repeat major violations, categorized by individual oil or gas lease, if applicable.

(e) The commission shall publish each annual plan on the

commission's Internet website not later than July 1 of the year preceding the state fiscal year in which the commission implements the plan.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 2, eff. September 1, 2017.

Sec. 81.067. OIL AND GAS REGULATION AND CLEANUP FUND. (a) The oil and gas regulation and cleanup fund is created as an account in the general revenue fund of the state treasury.

(b) Repealed by Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 3, eff. September 1, 2019.

(c) The fund consists of:

(1) proceeds from bonds and other financial security required by this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies, subject to the refund provisions of Section 91.1091, if applicable;

(2) private contributions, including contributions made under Section 89.084;

(3) expenses collected under Section 89.083;

(4) fees imposed under Section 85.2021;

(5) costs recovered under Section 91.457 or 91.459;

(6) proceeds collected under Sections 89.085 and 91.115;

(7) interest earned on the funds deposited in the fund;

(8) oil and gas waste hauler permit application fees collected under Section 29.015, Water Code;

(9) costs recovered under Section 91.113(f);

(10) hazardous oil and gas waste generation fees collected under Section 91.605;

(11) oil-field cleanup regulatory fees on oil collected under Section 81.116;

(12) oil-field cleanup regulatory fees on gas collected under Section 81.117;

(13) fees for a reissued certificate collected under Section 91.707;

(14) fees collected under Section 91.1013;

(15) fees collected under Section 89.088;

(16) fees collected under Section 91.142;

(17) fees collected under Section 91.654;
(18) costs recovered under Sections 91.656 and 91.657;
(19) fees collected under Section 81.0521;
(20) fees collected under Sections 89.024 and 89.026;
(21) legislative appropriations;
(22) any surcharges collected under Section 81.070;
(23) fees collected under Section 91.0115;
(24) fees collected under Subchapter E, Chapter 121, Utilities Code;
(25) fees collected under Section 27.0321, Water Code;
(26) fees collected under Section 81.071; and
(27) money collected under Section 81.021.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 10, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 1, eff. September 1, 2013.
Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 27, eff. September 1, 2015.
Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 3, eff. September 1, 2017.
Acts 2017, 85th Leg., R.S., Ch. 72 (S.B. 1422), Sec. 2, eff. May 22, 2017.
Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 13.001, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 3, eff. September 1, 2019.
Reenacted and amended by Acts 2019, 86th Leg., R.S., Ch. 467 (H.B. 4170), Sec. 11.001, eff. September 1, 2019.

Sec. 81.068. PURPOSES OF OIL AND GAS REGULATION AND CLEANUP FUND. Money in the oil and gas regulation and cleanup fund may be used by the commission or its employees or agents for any purpose related to the regulation of oil and gas development, including oil and gas monitoring and inspections, oil and gas remediation, and oil and gas well plugging, the study and evaluation of electronic access

to geologic data and surface casing depths necessary to protect usable groundwater in this state, the administration of pipeline safety and regulatory programs, public information and services related to those activities, and administrative costs and state benefits for personnel involved in those activities.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 11, eff. June 14, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 2, eff. September 1, 2013.
Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 448 (H.B. 7), Sec. 28, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 4, eff. September 1, 2017.

Sec. 81.069. REPORTING ON PROGRESS IN MEETING PERFORMANCE GOALS FOR THE OIL AND GAS REGULATION AND CLEANUP FUND. (a) The commission, through the legislative appropriations request process, shall establish specific performance goals for the oil and gas regulation and cleanup fund for the next biennium, including goals for each quarter of each state fiscal year of the biennium for the number of:

(1) orphaned wells to be plugged with state-managed funds;

(2) abandoned sites to be investigated, assessed, or cleaned up with state funds; and

(3) surface locations to be remediated.

(b) The commission shall provide quarterly reports to the Legislative Budget Board that include:

(1) the following information with respect to the period since the last report was provided as well as cumulatively:

(A) the amount of money deposited in the oil and gas regulation and cleanup fund;

(B) the amount of money spent from the fund for the purposes described by Subsection (a);

(C) the balance of the fund; and

(D) the commission's progress in meeting the quarterly performance goals established under Subsection (a) and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance; and

(2) any additional information or data requested in writing by the Legislative Budget Board.

(c) The commission shall submit to the legislature and make available to the public, annually, a report that reviews the extent to which money provided under Section 81.067 has enabled the commission to better protect the environment through oil-field cleanup activities. The report must include:

(1) the performance goals established under Subsection (a) for that state fiscal year, the commission's progress in meeting those performance goals, and, if the number of orphaned wells plugged with state-managed funds, abandoned sites investigated, assessed, or cleaned up with state funds, or surface locations remediated is at least five percent less than the number projected in the applicable goal established under Subsection (a), an explanation of the reason for the variance;

(2) the number of orphaned wells plugged with state-managed funds, by region;

(3) the number of wells orphaned, by region;

(4) the number of inactive wells not currently in compliance with commission rules, by region;

(5) the status of enforcement proceedings for all wells in violation of commission rules and the period during which the wells have been in violation, by region in which the wells are located;

(6) the number of surface locations remediated, by region;

(7) a detailed accounting of expenditures of money in the fund for oil-field cleanup activities, including expenditures for plugging of orphaned wells, investigation, assessment, and cleaning up of abandoned sites, and remediation of surface locations;

(8) the method by which the commission sets priorities by which it determines the order in which orphaned wells are plugged;

(9) a projection of the amount of money needed for the next biennium for plugging orphaned wells, investigating, assessing, and cleaning up abandoned sites, and remediating surface locations; and

(10) the number of sites successfully remediated under the voluntary cleanup program under Subchapter O, Chapter 91, by region.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Sec. 81.070. ESTABLISHMENT OF SURCHARGES ON FEES. (a) Except as provided by Subsection (b), the commission by rule shall provide for the imposition of reasonable surcharges as necessary on fees imposed by the commission that are required to be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067 in amounts sufficient to enable the commission to recover the costs of performing the functions specified by Section 81.068 from those fees and surcharges.

(b) The commission may not impose a surcharge on an oil-field cleanup regulatory fee on oil collected under Section 81.116 or an oil-field cleanup regulatory fee on gas collected under Section 81.117.

(c) The commission by rule shall establish a methodology for determining the amount of a surcharge that takes into account:

(1) the time required for regulatory work associated with the activity in connection with which the surcharge is imposed;

(2) the number of individuals or entities from which the commission's costs may be recovered;

(3) the effect of the surcharge on operators of all sizes, as measured by the number of oil or gas wells operated;

(4) the balance in the oil and gas regulation and cleanup fund; and

(5) any other factors the commission determines to be important to the fair and equitable imposition of the surcharge.

(d) The commission shall collect a surcharge on a fee at the time the fee is collected.

(e) A surcharge collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

(f) A surcharge collected under this section shall not exceed an amount equal to 185 percent of the fee on which it is imposed.

Added by Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.02, eff. September 28, 2011.

Sec. 81.071. PIPELINE SAFETY AND REGULATORY FEES. (a) The commission by rule may establish pipeline safety and regulatory fees to be assessed for permits or registrations for pipelines under the jurisdiction of the commission's pipeline safety and regulatory program.

(b) The commission may establish fees to be assessed annually against permit or registration holders, as well as individual fees for new permits or registrations, permit or registration renewals, and permit or registration amendments.

(c) The fees must be in amounts that in the aggregate are sufficient to support all pipeline safety and regulatory program costs, including:

(1) permitting or registration costs;

(2) administrative costs; and

(3) costs of employee salaries and benefits.

(d) The commission by rule must establish the method or methods by which the fees will be calculated and assessed so that fee amounts will reflect the time spent and costs incurred to perform the regulatory work associated with permitting or registering pipelines, the effects of required fees on operators of all sizes, and other factors the commission determines are important to the fair imposition of the fees. The commission may base the fees on any factor the commission considers necessary to efficiently and fairly recover the pipeline safety and regulatory program's costs, including:

(1) the length of the pipeline;

(2) the number of new permits or registrations, permit or registration renewals, or permit or registration amendments; or

(3) the number of pipeline systems.

(e) The commission by rule may establish a reasonable late payment penalty for a fee charged under this section.

(f) The authority provided by this section is in addition to the authority provided by Section 121.211, Utilities Code, and the commission shall consider any fees assessed under that section in establishing the fees to be assessed under this section.

(g) A fee collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 5, eff. September 1, 2017.

Sec. 81.072. VERIFICATION BY CONTRACTORS. (a) In this section, "E-verify program" has the meaning assigned by Section 673.001, Government Code.

(b) The commission may not award a contract for goods or services in this state to a contractor unless the contractor and any subcontractor register with and participate in the E-verify program to verify employee information. The contractor and any subcontractor shall continue to participate in the program during the term of the contract.

(c) The commission shall develop procedures for the administration of the E-verify program under this section.

Added by Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 6, eff. September 1, 2017.

SUBCHAPTER D. WITNESSES

Sec. 81.091. INCRIMINATING TESTIMONY. If a witness fails or refuses to appear on being summoned, to answer any question he is asked, or to produce any record or data required by subpoena, the claim that the testimony may tend to incriminate the person giving it does not excuse the witness from testifying or producing the records and data, but the evidence or testimony may not be used against the person on the trial of any criminal proceeding.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.092. FEE FOR EXECUTING PROCESS. The sheriff or constable executing process shall receive the compensation authorized by the commission.

Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.093. DEPOSITIONS. (a) In a matter pending for hearing before the commission or a division of the commission, the commission or an interested party may produce the testimony of a witness by written or oral deposition instead of compelling the personal attendance of the witness. For that purpose, the commission may issue a commission or other process necessary to take a deposition.

(b) The deposition shall be taken, to the extent applicable and to the greatest extent possible, in accordance with the provisions of the Texas Rules of Civil Procedure relating to written and oral depositions.

Added by Acts 2009, 81st Leg., R.S., Ch. 85 (S.B. 1540), Sec. 3.04, eff. April 1, 2011.

SUBCHAPTER E. FEES

Sec. 81.115. APPROPRIATIONS TO COMMISSION FOR OIL AND GAS REGULATION AND CLEANUP PURPOSES. Money appropriated to the commission under the General Appropriations Act for the purposes described by Section 81.068 shall be paid from the oil and gas regulation and cleanup fund or other fund indicated by the appropriation.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 1, eff. Sept. 1, 1981.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.03, eff. September 28, 2011.

Sec. 81.116. OIL-FIELD CLEANUP REGULATORY FEE ON OIL. (a) An oil-field cleanup regulatory fee is imposed on crude petroleum produced in this state in the amount of five-eighths of one cent on each barrel of 42 standard gallons.

(b) The fee is in addition to, and independent of any liability for, the tax imposed under Chapter 202, Tax Code.

(c) Except as provided by Subsection (d) of this section, Chapter 202, Tax Code, applies to the administration and collection of the fee, and the penalties provided by that chapter apply to any person who fails to pay or report the fee.

(d) The exemptions and reductions set out in Sections 202.052, 202.054, 202.056, 202.057, 202.059, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 7, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 17, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 1, eff. January 1, 2006.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.04, eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 470 (S.B. 757), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 1, eff. September 1, 2019.

Sec. 81.117. OIL-FIELD CLEANUP REGULATORY FEE ON GAS. (a) An oil-field cleanup regulatory fee is imposed on gas initially produced and saved in this state in the amount of one-fifteenth of one cent for each thousand cubic feet.

(b) The fee is in addition to, and independent of any liability for, the tax imposed under Section 201.052, Tax Code.

(c) Except as provided by Subsection (d), the administration, collection, and enforcement of the fee is the same as for the tax imposed under Section 201.052, Tax Code.

(d) The exemptions and reductions set out in Sections 201.053, 201.057, 201.058, and 202.060, Tax Code, do not affect the fee imposed by this section.

(e) Proceeds from the fee, excluding any penalties collected in connection with the fee, shall be deposited to the oil and gas regulation and cleanup fund as provided by Section 81.067.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 2, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 8, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 200, Sec. 18, eff. Sept. 1, 2003. Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 2, eff. January 1, 2006.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.05, eff. September 28, 2011.

Acts 2019, 86th Leg., R.S., Ch. 55 (H.B. 2675), Sec. 2, eff. September 1, 2019.

SUBCHAPTER F. CAMPAIGNING

Sec. 81.151. PENALTY FOR CAMPAIGNING. A person who receives a salary from funds provided under this title and who uses his time or a state-owned automobile for campaign purposes or for the purpose of furthering the candidacy of his employer or any other candidate for state office is guilty of a misdemeanor and on conviction shall be fined not less than $100 nor more than $500 and shall be confined in jail for not less than 30 nor more than 90 days.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.152. DISCHARGE AND INELIGIBILITY. A person found guilty under Section 81.151 of this code shall be discharged immediately from his position and shall be ineligible for employment by the state in the future.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.153. SETTING CIVIL COMPLAINT FOR HEARING. If a citizen of this state files a civil complaint with a district court in Travis County charging an employee with use of his time or a state-owned automobile for campaign purposes or to further the candidacy of his employer or any other candidate for state office, the court shall set the complaint for hearing at a time not less than 10 nor more than 20 days after the day on which the complaint is filed.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.154. NOTICE TO EMPLOYEE. The court shall have notice of the hearing served on the employee against whom the complaint was filed at least five days before the date of the hearing.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.155. COURT'S ORDER. At the hearing, if the court determines that the employee has used his time or a state-owned automobile as charged in the complaint, the court shall certify the fact to the department, agency, or commission which employs the person and order the employee's immediate discharge.

Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 81.156. APPEAL. Any person against whom charges have been filed is entitled to appeal to the court of appeals, but the pendency of the appeal does not suspend his discharge.

Acts 1977, 65th Leg., p. 2512, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 799, ch. 291, Sec. 91, eff. Sept. 1, 1981.

SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS
CHAPTER 85. CONSERVATION OF OIL AND GAS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Pool," "common pool," "field," or "common source of supply" means a common reservoir.

(3) "Pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both.

(4) "Product" and "product of oil or gas" mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude

petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.

(b) "Oil" means crude petroleum oil, crude petroleum, and crude oil, and "gas" means natural gas. These terms shall not be construed as referring to substances different from those referred to in this chapter and other laws as "oil and gas" and these terms mean the same whether used in this chapter or in other laws relating to the conservation of oil and gas.

Acts 1977, 65th Leg., p. 2514, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.002. ANTITRUST AND MONOPOLY STATUTES. (a) The provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, and Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, do not affect, alter, diminish, change, or modify the antitrust and monopoly laws of this state and do not directly or indirectly authorize a violation of the antitrust and monopoly laws of this state.

(b) It is the legislative intent that no provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, shall affect, alter, diminish, or amend in any manner a provision of the antitrust and monopoly laws of this state or authorize a violation of the antitrust and monopoly laws. The legislative intent expressed in this subsection shall prevail and take precedence over sections cited in this subsection regardless of any statement in these sections to the contrary.

(c) If any provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the

44th Legislature, Regular Session, 1935, as amended, is construed by a court of this state in a manner that will affect, alter, diminish, or modify any provision of the antitrust and monopoly laws of this state, this provision which is in conflict is declared null and void rather than the antitrust and monopoly laws.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 85.011. SUPERVISORS, DEPUTY SUPERVISORS, AND UMPIRES. The commission shall employ all supervisors, deputy supervisors, and umpires necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.012. ASSISTANTS AND CLERICAL HELP. The commission shall employ other assistants and clerical help necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.013. PERSONS ENFORCING RULES AND ORDERS. A person entrusted with the enforcement of the rules and orders of the commission shall be a regular employee of the state and paid by the state. No person other than a regular employee of the state may be charged with or relied on for the performance of these duties.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PROVISIONS GENERALLY APPLICABLE TO THE CONSERVATION OF OIL AND GAS

Sec. 85.041. ACTS PROHIBITED IN VIOLATION OF LAWS, RULES, AND ORDERS. (a) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the commission under such a statute, is prohibited.

(b) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the commission under such a statute, is prohibited.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.042. RULES AND ORDERS. (a) The commission may promulgate and enforce rules and orders necessary to carry into effect the provisions of Section 85.041 of this code and to prevent that section's violation.

(b) When necessary, the commission shall make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.043. APPLICATION OF CERTAIN RULES AND ORDERS. If the commission requires a showing that refined products were manufactured from oil legally produced, the requirement shall be of uniform application throughout the state; provided that, if the rule or order is promulgated for the purpose of controlling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the

commission may determine whether or not those conditions do exist, and if it is shown that they do, the rule or order may be enlarged to include the additional area.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 1, eff. June 17, 2005.

Sec. 85.044. EXEMPT PURCHASES. The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.045. WASTE ILLEGAL AND PROHIBITED. The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.046. WASTE. (a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas;

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand; and

(11) surface or subsurface waste of hydrocarbons, including the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

(c) The commission, after notice and opportunity for hearing, may permit surface commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir

or from one or more tracts of land producing from different reservoirs if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights. The commission may permit the commingling regardless of whether the tracts or commission-designated reservoirs have the same working or royalty interest ownership. The amount of production attributable to each tract or commission-designated reservoir shall be determined in a manner consistent with this title. The commission has broad discretion in administering this subsection and shall adopt and enforce rules or orders as necessary to administer this subsection.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 673, ch. 300, Sec. 1, eff. May 29, 1979; Acts 1981, 67th Leg., p. 3166, ch. 830, Sec. 2, eff. June 17, 1981; Acts 1995, 74th Leg., ch. 870, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 871, Sec. 1, eff. Sept. 1, 1995.

Sec. 85.047. EXCLUSION FROM DEFINITION OF WASTE. The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.048. AUTHORITY TO LIMIT PRODUCTION. (a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.049. HEARING. (a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.050. PROCEDURE AT HEARING. (a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.051. ADOPTION OF RULE OR ORDER. If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.052. COMPLIANCE WITH RULE OR ORDER. From and after the promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.053. DISTRIBUTION, PRORATION, AND APPORTIONMENT OF ALLOWABLE PRODUCTION. (a) If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or the production of gas from wells producing gas only, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis if the commission finds that action to be necessary to:

(1) prevent waste; or

(2) adjust the correlative rights and opportunities of each owner of oil or gas in a common reservoir to produce and use or sell the oil or gas as permitted in this chapter.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may distribute, prorate, apportion, or allocate the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single pool; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2578, ch. 688, Sec. 1, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 2, eff. June 17, 2005.

Sec. 85.054. ALLOWABLE PRODUCTION OF OIL. (a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination or if the commission on its own initiative finds such an action to be necessary, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one pool shall not be discriminated against in favor of another pool.

(c) The commission may determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 3, eff. June 17, 2005.

Sec. 85.055. ALLOWABLE PRODUCTION OF GAS. (a) If, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, the commission finds that full production from wells producing gas only from a common source of supply of gas in this state is in excess of the reasonable market demand, the commission shall inquire into the production and reasonable market demand for the gas and shall determine the allowable production from the common source of supply.

(b) The allowable production from a prorated common source of supply is that portion of the reasonable market demand that can be produced without waste.

(c) The commission shall allocate, distribute, or apportion the allowable production from the prorated common source of supply among the various producers on a reasonable basis and shall limit the production of each producer to the amount allocated or apportioned to the producer.

(d) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the

commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may allocate, distribute, or apportion the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single common source of supply; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2579, ch. 688, Sec. 2, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 2, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 4, eff. June 17, 2005.

Sec. 85.056. PUBLIC INTEREST. In the administration of the provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, the commission shall take into consideration and protect the rights and interests of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.057. RESTRICTION ON UNEXPLORED TERRITORY. The provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, shall not be construed to grant the commission any authority to

restrict or in any manner limit the drilling of wells to explore for oil or gas or both in territory that is not known to produce either oil or gas.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.058. COMMISSION INQUIRY AND DETERMINATION. From time to time, the commission may inquire into the production, storage, transportation, refining, reclaiming, treating, marketing, and processing of oil and gas, and the reasonable market demand for oil and gas, so that it may determine whether or not waste exists or is imminent or whether the oil and gas conservation laws of this state or the rules and orders of the commission promulgated under those laws are being violated.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 346 (S.B. 1175), Sec. 5, eff. June 17, 2005.

Sec. 85.059. RECORDS. Each person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either shall keep in this state accurate records of the amount of oil or gas which such person produced, stored, transported, refined, reclaimed, treated, marketed, or processed and of the source from which the person produced, obtained, or received the oil or gas or the products of either and the disposition made of them.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.060. SWORN STATEMENTS AND REPORTS. The commission may require a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to make and file with the commission sworn statements or reports as to

facts within his knowledge or possession pertaining to the reasonable market demand for oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of oil or gas and the products of either. The report shall include those facts enumerated in Section 85.059 of this code.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.061. INSPECTION AND GAUGING. The commission may require any well, lease, refinery, plant, tank or storage, pipeline, or gathering line that belongs to or is under the control of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to be inspected or gauged by the agents of the commission whenever and as often as and for such periods as the commission considers necessary.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.062. EXAMINATION OF BOOKS AND RECORDS. The commission and its agents and the attorney general and his assistants and representatives may examine the books and records of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either as often as considered necessary for the purpose of determining the facts concerning matters covered by Sections 85.058 through 85.061 of this code.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.063. VIOLATIONS BY CORPORATIONS. (a) The failure of a corporation chartered under the laws of this state to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall constitute grounds for forfeiture of the

corporation's charter rights and privileges and dissolution of its corporate existence.

(b) The failure of a foreign corporation to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall be grounds for enjoining and forever prohibiting such corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.064. ACTION AGAINST CORPORATION. (a) If he determines that the public interest requires it, the attorney general shall institute suit or other appropriate action in Travis County for forfeiture of charter rights of a domestic corporation or to enjoin a foreign corporation from doing business in this state when a corporation is deemed guilty of violating the provisions of Sections 85.059 through 85.062 of this code. The attorney general may take this action on his own motion and without leave or order of any judge or court.

(b) On judgment against a defendant for violating the provisions of Sections 85.059 through 85.062 of this code, the court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation or enjoin a defendant foreign corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.065. INFORMAL COMPLAINT PROCESS REGARDING LOSS OF OR INABILITY TO ACCOUNT FOR NATURAL GAS GATHERED OR TRANSPORTED. (a) A producer may submit a written request to a person who gathers or transports gas for the producer for an explanation of any loss of or inability to account for the gas tendered to the person by the producer. The request may ask the person to provide any or all of the information that would be required to be included in an accounting under Subsection (c). Not later than the 30th day after

the date the person receives the request from the producer, the person must provide the producer a written explanation of any loss of or inability to account for the gas tendered to the person by the producer. The response must include any relevant information requested by the producer that is available to the person and that would be required to be included in an accounting under Subsection (c).

(b) If a producer submits a request under Subsection (a) to a person who gathers or transports gas for the producer and the person provides an inadequate explanation of any loss of or inability to account for the gas, or fails to provide any explanation of any loss of or inability to account for the gas by the deadline provided by that subsection, the producer may file with the commission an informal complaint against the person. An informal complaint may not be filed before the 30th day after the end of the production period covered by the complaint. An informal complaint must:

(1) specify the production period covered by the complaint;

(2) state that at least 30 days have elapsed since the end of the production period covered by the complaint; and

(3) if the producer metered the volume of gas tendered to the person who gathered or transported the gas:

(A) describe the type of meter used; and

(B) state the date the meter was last calibrated.

(c) Not later than the 14th day after the date the complaint is filed, the person who gathered or transported the gas shall provide to the producer and the commission an accounting of the gas tendered to the person by the producer for gathering or transport during the production period covered by the complaint. The accounting may be provided on a thousand cubic feet or a million British thermal unit basis, as applicable, and must include the information the commission determines to be necessary to resolve an informal complaint under this section, which may include:

(1) the amount of gas tendered by the producer from each well that has a meter;

(2) a laboratory analysis of the composition and heating value of the gas and other substances tendered by the producer, if such an analysis has been performed;

(3) if available, a schematic drawing of the person's system for gathering or transporting gas that shows:

(A) each meter type;

(B) the date each meter was last calibrated;

(C) the accuracy of each meter; and

(D) all equipment that alters, disposes of, or otherwise consumes any of the gas tendered to the person;

(4) the estimated amount of gas used for fuel, flared, or vented for construction, repair, maintenance, or other operational uses and, if the information is available, the location of that use;

(5) the estimated amount of contaminants or other impurities removed from the gas and the location at which the impurities were removed;

(6) the estimated amount of liquid hydrocarbons and condensate removed from the gas and the location at which the liquid hydrocarbons and condensate were removed;

(7) the estimated amount of gas lost and the location at which the gas was lost;

(8) the estimated amount of gas redelivered by the person, including the amount of gas sold that was allocated to the producer, and the location at which the redelivery of the gas occurred;

(9) any amount of gas received from the producer by the person that remains unaccounted for; and

(10) any other information the person who gathered or transported the gas considers relevant to the resolution of the complaint.

(d) The commission may grant an extension of time to the person who gathered or transported the gas to provide the accounting required by Subsection (c). An extension may not permit the accounting to be provided later than the 45th day after the date the informal complaint was filed.

(e) If the person who gathered or transported the gas does not have the information necessary to provide the accounting required by Subsection (c), the person must provide to the producer and to the commission a written explanation of the reason the person does not have the information.

(f) If the person who gathered or transported the gas fails to provide the accounting required by Subsection (c) or the explanation required by Subsection (e), the informal complaint filed by the producer is considered to be valid.

(g) If Subsection (f) applies or the commission determines that the person who gathered or transported the gas committed waste, the commission may take any action it considers appropriate, including

issuing an order in a formal proceeding to prevent waste by the person who gathered or transported the gas.

(h) This subsection applies only to a producer and a person who gathers or transports gas for the producer under a contract between the producer and that person that is entered into or renewed on or after September 1, 2007. On written request, the producer is entitled to audit the books and records of the person that pertain to the contract between the producer and the person for the purpose of verifying whether any gas tendered to the person by the producer that the person has lost or is unable to account for has been allocated to the volume of gas tendered to the person by the producer as required by the contract. A producer is not entitled to conduct an audit under this subsection more frequently than annually.

Added by Acts 2007, 80th Leg., R.S., Ch. 696 (H.B. 1920), Sec. 1, eff. September 1, 2007.

SUBCHAPTER D. MARGINAL WELLS

Sec. 85.121. DEFINITIONS. (a) In this subchapter, "marginal well" means an oil well that is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil, as provided in this subchapter, that would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of the well, if its maximum daily production were artificially curtailed.

(b) As used in Subsection (a), Section 85.121 and Section 85.122 of this code, "gas lift" means gas lift by the use of gas not in solution with oil produced.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.122. WELLS CONSIDERED AS MARGINAL WELLS. Wells that are considered marginal wells include any oil well in this state that is incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift and having:

(1) when producing from a depth of 2,000 feet or less, a

maximum daily capacity for production of 10 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(2) when producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet, a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(3) when producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet, a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(4) when producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet, a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 10 consecutive days of stabilized production; or

(5) when producing from a horizon deeper than 8,000 feet, a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 10 consecutive days of stabilized production.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 325, ch. 73, Sec. 1, eff. May 3, 1983.

Sec. 85.123. CURTAILMENT OF MARGINAL WELL PRODUCTION AS WASTE. To artificially curtail the production of a marginal well below the marginal limit as set out in Sections 85.121 through 85.122 of this code before the marginal well's ultimate plugging and abandonment is declared to be waste.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.124. RULES AND ORDERS RESTRICTING MARGINAL WELLS. No rule or order of the commission or of any other constituted legal authority shall be adopted requiring the restriction of the production of a marginal well.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.125. EFFECT OF OTHER SUBCHAPTERS. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, authorize or may be construed to limit, modify, or repeal the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. RULES AND ORDERS OF THE COMMISSION

Sec. 85.201. ADOPTION OF RULES AND ORDERS. The commission shall make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.202. PURPOSES OF RULES AND ORDERS. (a) The rules and orders of the commission shall include rules and orders:

(1) to prevent waste, as defined in Section 85.046 of this code, of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas;

(2) to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata;

(3) for the drilling of wells and preserving a record of the drilling of wells;

(4) to require wells to be drilled and operated in a manner that will prevent injury to adjoining property;

(5) to prevent oil and gas and water from escaping from the strata in which they are found into other strata;

(6) to provide rules for shooting wells and for separating oil from gas;

(7) to require records to be kept and reports made; and

(8) to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the

commission's rules or orders for the prevention of waste.

(b) The commission shall do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and may adopt other rules and orders as may be necessary for those purposes.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

(1) $200 if the total depth of the well is 2,000 feet or less;

(2) $225 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(3) $250 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;

(4) $300 if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of $200 when a Rule 37 spacing or a Rule 38 density exception review is requested.

(c) An applicant shall submit an additional nonrefundable fee of $150 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) All fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1983, 68th Leg., p. 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 74, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 603, Sec. 5, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1089, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 10, eff. Sept. 1, 2004.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.06, eff. September 28, 2011.

Sec. 85.203. CONSIDERATIONS IN ADOPTING RULES AND ORDERS TO PREVENT WASTE. The commission may consider any or all of the definitions of waste stated in Section 85.046 of this code, whenever the facts, circumstances, or conditions make them applicable, in adopting rules or orders to prevent waste of oil or gas.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.204. PROHIBITED RULES AND ORDERS. The commission is not authorized to adopt a rule or order or to make a determination or holding that any mode, manner, or process of refining oil constitutes waste.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.205. NOTICE AND HEARING. No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.206. EMERGENCY ORDER. (a) If the commission finds an emergency to exist, that in the commission's judgment requires the adoption of an order without giving notice or holding a hearing, the emergency order may be adopted and shall be valid as though notice had been given and a hearing held.

(b) The emergency order shall remain in force no longer than 15 days from its effective date.

(c) The emergency order shall expire, in any event, at the time an order relating to the same subject matter and adopted after proper notice and hearing becomes effective.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.207. EFFECT OF AMENDMENT, REPEAL, OR EXPIRATION OF A RULE OR ORDER. The amendment, repeal, or expiration of a rule or order of the commission adopted under the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, shall not have the effect of releasing or discharging from liability, penalty, or forfeiture any person violating the rule or order before the effective date of the amendment, repeal, or expiration. Prosecutions and suits for these violations, liabilities, penalties, and forfeitures shall be instituted and proceeded with in all respects as if the rule or order had not been amended or repealed, or had not expired.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. SUITS CHALLENGING THE VALIDITY OF LAWS AND ORDERS

Sec. 85.241. SUITS BY INTERESTED PERSONS. Any interested person who is affected by the conservation laws of this state or orders of the commission relating to oil or gas and the waste of oil or gas, and who is dissatisfied with any of these laws or orders, may file suit against the commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.242. EXPEDITIOUS TRIAL. A suit brought under Section 85.241 of this code shall be advanced for trial and shall be determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 85.243. BURDEN OF PROOF. In the trial of a suit brought under Section 85.241 of this code, the burden of proof shall be on the party complaining of the law or order, and the law or order is deemed prima facie valid.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.244. CONDITIONS FOR INJUNCTIVE RELIEF. No temporary restraining order, temporary or permanent injunction, or other form of injunctive relief may be granted against the commission, its members, agents, and representatives to restrain it or them from enforcing any rule or order adopted by the commission under the oil and gas conservation laws of this state or from enforcing any of these laws unless notice is given to the commission and a hearing is held as provided in this subchapter.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.245. NOTICE TO COMMISSION. (a) At the time a petition or application is filed requesting a temporary restraining order or any form of temporary injunctive relief, the clerk of the court in which the petition or application is filed shall issue notice in writing to the commission.

(b) The notice shall include:

(1) the docket number;

(2) the style of the case; and

(3) a brief statement of the nature of the suit.

(c) The notice shall be served on the commission in Travis County by delivering a copy of the citation to the commission, a member of the commission, or the secretary of the commission for the service of other citations.

(d) Five days after the citation has been served a hearing may be held on the petition or application.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.246. INTERVENTION IN SUIT. In the discretion of the court, any person who is interested in the subject matter of the suit may intervene.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.247. RULES AND ORDERS PRIMA FACIE VALID. The rule or order complained of in the suit is prima facie valid, and the use and introduction of the verified petition of the plaintiff shall not be sufficient to overcome the prima facie validity of the rule or order or to authorize the court to grant any injunctive relief against the enforcement of the rule or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.248. BOND. Before an order granting injunctive relief against an oil and gas conservation law, rule, or order of the commission becomes effective, the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in a reasonably sufficient amount determined by the court to indemnify any persons whom the court may find from the facts proven will suffer damage as a result of the violation of the law, rule, or order in question. The persons shall be named in the order of the judge at the time the amount of the bond is fixed by the court and entered in the record.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.249. CONDITIONS OF BOND. (a) In determining the amount of the bond, the judge shall consider all facts and circumstances surrounding the parties and the ability of the

plaintiff to make the bond so that the judge can determine the amount and reasonableness of the bond under the facts and circumstances.

(b) A bond made or executed by a bonding or surety company shall be by a company authorized to do business in Texas.

(c) The bond shall be approved by the judge and shall be for the use and benefit of and may be sued on by any person named in the order who suffers damage as a result of violation of the law, rule, or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.250. CHANGING AMOUNT, PARTIES, AND SURETIES. On a motion and for good cause shown, and after notice to the parties, the court periodically may:

(1) increase or decrease the amount of the bond;

(2) add new beneficiaries; and

(3) require new and additional sureties that the facts may justify.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.251. SUITS ON BONDS. A suit on a bond must be instituted within six months from the date of the final determination of the validity in whole or in part of the rule or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.252. INADMISSIBLE EVIDENCE. A finding by the court that any party is likely to suffer damage is not admissible as evidence of damages in a suit on the bond.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.253. APPEAL. After notice and hearing on an application for injunctive relief, either party to the suit is entitled to appeal the judgment or order granting or refusing the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief or granting or overruling a motion to dissolve the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.254. APPEAL HAS PRECEDENCE. The appeal is returnable at once to the appellate court and the action appealed shall have precedence in the appellate court over all cases, proceedings, and causes of a different character that are pending.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.255. EARLY DECISION BY COURT OF APPEALS. The court of appeals shall decide the question in the appeal at as early a date as possible.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 92, eff. Sept. 1, 1981.

Sec. 85.256. APPEAL PROCEDURES. The provisions and requirements of Article 4662, Revised Civil Statutes of Texas, 1925, as amended, and Rule 385 of the Texas Rules of Civil Procedure, as amended, relating to temporary injunctions, apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve a temporary restraining order under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.257. CERTIFIED QUESTIONS AND WRITS OF ERROR. (a) If a question is certified or writ of error requested or granted to the supreme court, the supreme court shall set the cause for hearing immediately and shall decide the cause at as early a date as possible.

(b) The cause shall have precedence over all other causes, proceedings, and causes of a different character in the court.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.258. AUTHORITY OF COURT OF APPEALS TO ISSUE WRITS. The court of appeals and its judges have the jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of a trial court or judge who grants any type of injunctive relief without notice and hearing in violation of the requirements of Sections 85.244 and 85.245 of this code.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 93, eff. Sept. 1, 1981.

Sec. 85.259. ISSUANCE OF WRITS BY COURT OF APPEALS. If it appears that the provisions of Sections 85.244 and 85.245 of this code have not been complied with, then on proper application from the commission to the court of appeals having jurisdiction, the court shall issue instanter the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge from enforcing or attempting to enforce the provisions of the injunction issued by him and to prohibit and restrain the party or parties in whose favor the order is entered from acting or attempting to act under the protection of the order or from violating the law, rule, or order of the commission attacked.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 94, eff. Sept. 1, 1981.

SUBCHAPTER H. RECEIVERSHIP

Sec. 85.291. REQUEST FOR RECEIVER. If a rule or order of the commission has been finally adjudicated to be valid in whole or part in a suit to which the commission is a party, and if after that time a party to the suit or other proceedings in which the rule or order was declared valid violates the rule, order, or judgment or shall thereafter use or permit to be used any property owned or controlled by him in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and stating that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting that a receiver be appointed as provided in this subchapter.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.292. APPOINTMENT OF RECEIVER AND BOND. After an application is submitted as provided in Section 85.291 of this code, the judge of the trial court, after notice and hearing, may appoint a receiver of the property involved or used in violation of the rule, order, or judgment and shall set a proper bond for the receiver.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.293. DUTIES OF RECEIVER. As soon as the receiver is qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.294. DISSOLUTION OF RECEIVERSHIP. A party whose property is placed in receivership may move to dissolve the receivership and to discharge the receiver on the terms the court may prescribe.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. DAMAGES

Sec. 85.321. SUIT FOR DAMAGES. A party who owns an interest in property or production that may be damaged by another party violating the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, or another law of this state prohibiting waste or a valid rule or order of the commission may sue for and recover damages and have any other relief to which he may be entitled at law or in equity. Provided, however, that in any action brought under this section or otherwise, alleging waste to have been caused by an act or omission of a lease owner or operator, it shall be a defense that the lease owner or operator was acting as a reasonably prudent operator would act under the same or similar facts and circumstances.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1071, Sec. 1, eff. Aug. 31, 1987.

Sec. 85.322. PROCEEDINGS NOT TO IMPAIR SUIT FOR DAMAGES. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, no suit by or against the commission, and no penalties imposed on or claimed against any party violating a law, rule, or order of the commission shall impair or abridge or delay a cause of action for damages or other relief that an owner of land or a producer of oil or gas, or any other party at interest, may have or assert against any party violating any rule or order of the commission or any judgment under this chapter.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER J. INJUNCTIONS

Sec. 85.351. SUIT FOR INJUNCTION. (a) If it appears that a person is violating or threatening to violate the provisions of this

chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws, the commission, through the attorney general, shall bring suit in the name of the state to restrain the violation or threatened violation.

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 2, eff. Sept. 1, 1983.

Sec. 85.352. TYPES OF COURT ORDERS. In the suit, the commission in the name of the state may obtain prohibitory and mandatory injunctions, including temporary restraining orders and temporary injunctions, that the facts may warrant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.353. APPOINTMENT OF RECEIVER. (a) The violation by a person of any injunction granted under the provisions of this subchapter shall be sufficient grounds for appointment by the court of a receiver to take charge of the person's property and to exercise authority that in the judgment of the court is necessary to bring about compliance with the injunction. The court may appoint the receiver either on its own motion or on motion of the commission in the name of the state.

(b) No receiver may be appointed until after notice is given and a hearing is held.

(c) The authority to appoint a receiver is in addition to and cumulative of the authority to punish for contempt.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER K. PENALTIES, IMPRISONMENT, AND CONFINEMENT

Sec. 85.381. PENALTY FOR VIOLATION OF LAWS, RULES, AND ORDERS. (a) In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws is subject to a penalty of not more than:

(1) $10,000 when the provision, rule, or order pertains to safety or the prevention or control of pollution; or

(2) $1,000 when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) The applicable maximum penalty may be assessed for each and every day of violation and for each and every act of violation.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.382. VENUE. The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of the residence of any defendant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.383. SUIT. By direction of the commission, the suit to recover the penalty shall be instituted and conducted in the name of the state by the attorney general or by the county or district attorney in the county in which the suit is brought.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.384. EFFECT OF RECOVERY OR PAYMENT OF PENALTY. The recovery or payment of the penalty shall not authorize the violation of any provision of Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.385. PERSONS AIDING OR ABETTING VIOLATION. Any person who aids or abets any other person in violating Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order adopted by the commission under those laws is subject to the same penalties as provided in Section 85.381 of this code.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.3855. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who:

(1) violates Section 91.705 or 91.706 or a rule or order adopted under Section 91.705 or 91.706; or

(2) knowingly destroys, breaks, removes, or otherwise tampers with, or attempts to destroy, break, remove, or otherwise tamper with, a cap, seal, or other device placed by the commission on an oil well, gas well, oil and gas well, or other associated oil or gas gathering equipment.

(b) The amount of the penalty may not exceed $10,000 for each violation. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(f) A penalty imposed under this section is in addition to a forfeiture provided by law or a penalty imposed by the commission for contempt for violation of a commission rule or order.

Added by Acts 1999, 76th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 2, eff. September 1, 2007.

Sec. 85.386. FORGING NAMES ON PERMITS AND TENDERS. A person shall be imprisoned in the Texas Department of Criminal Justice for not less than two nor more than five years if he:

(1) forges the name of an agent, officer, or employee of the commission to a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas;

(2) forges the name of any person to such a tender or permit; or

(3) knowingly uses a forged instrument to induce another to handle or transport oil or gas or any product or by-product of oil or gas.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.133, eff. September 1, 2009.

Sec. 85.387. PROCURING TENDERS AND PERMITS. A person shall be imprisoned in the Texas Department of Criminal Justice for not less than two nor more than five years if he:

(1) knowingly procures or causes an agent, officer, or employee of the commission to approve or issue a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas that includes a statement or representation that is false and that materially misrepresents the true facts respecting the oil or gas or any product or by-product of either; or

(2) procures or causes an agent, officer, or employee of the commission to issue to him a permit or tender relating to oil or gas or any product or by-product of either with the intent to defraud.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.134, eff. September 1, 2009.

Sec. 85.388. POSSESSING A FORGED PERMIT OR TENDER. Any person who knowingly has in his possession a forged tender or permit of the commission relating to oil or gas or any product or by-product of oil or gas for the purpose of transporting, handling, or selling oil or gas shall be guilty of a misdemeanor and on conviction shall be fined not less than $25 nor more than $1,000 or shall be confined in the county jail for not less than 30 days nor more than one year, or both.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.389. CRIMINAL PENALTY. (a) A person who is not the owner or operator of an oil well, gas well, or oil and gas well, a purchaser under contract of oil, gas, or oil and gas from a well, a gatherer with written authorization from the owner, operator, or purchaser, or an authorized representative of the commission who

knowingly destroys, breaks, removes, or otherwise tampers with or attempts to destroy, break, remove, or otherwise tamper with any cap, seal, or other device placed on an oil well, gas well, oil and gas well, or associated oil or gas gathering equipment by the owner or operator for the purpose of controlling or limiting the operation of the well or associated equipment commits an offense.

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

Added by Acts 1983, 68th Leg., p. 5230, ch. 960, Sec. 1, eff. Sept. 1, 1983.

CHAPTER 86. REGULATION OF NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 86.001. DECLARATION OF POLICY. In recognition of past, present, and imminent evils occurring in the production and use of gas as a result of waste in this production and use of gas in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the gas, the provisions of this chapter are enacted for the protection of public and private interests against these evils by prohibiting waste and compelling ratable production.

Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.002. DEFINITIONS. In this chapter:

(1) "Oil" means crude petroleum oil.

(2) "Gas" means natural gas.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Common reservoir" means all or part of any oil or gas field or oil and gas field that comprises and includes any area that is underlaid or that, from geological or other scientific data or experiments or from drilling operations or other evidence, appears to be underlaid by a common pool or accumulation of oil or gas or oil and gas.

(5) "Gas well" means a well that:

(A) produces gas not associated or blended with oil at the time of production;

(B) produces more than 100,000 cubic feet of gas to each barrel of oil from the same producing horizon; or

(C) produces gas from a formation or producing horizon productive of gas only encountered in a well bore through which oil also is produced through the inside of another string of casing.

(6) "Oil well" means any well that produces one barrel or more of oil to each 100,000 cubic feet of gas.

(7) "Dry gas" means gas produced from a stratum that does not produce oil.

(8) "Sour gas" means gas:

(A) containing more than one and one-half grains of hydrogen sulphide per 100 cubic feet;

(B) containing more than 30 grains of total sulphur per 100 cubic feet; or

(C) which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(9) "Sweet gas" means all gas except sour gas and casinghead gas.

(10) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(11) "Natural gasoline" means gasoline manufactured from casinghead gas or from any gas.

(12) "Cubic foot of gas" or "standard cubic foot of gas" means the volume of gas, including natural and casinghead gas, contained in one cubic foot of space at a standard pressure base of 14.65 pounds per square inch absolute and at a standard temperature base of 60 degrees Fahrenheit, and if the conditions of pressure and temperature differ from this standard, conversion of the volume from the differing conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.003. DETERMINATION OF SEPARATE WELLS. If oil or gas, or both, is produced through different strings of casing set in the same well bore, the inner string through which oil or gas, or both, is produced shall be regarded as one well, and each successive

additional string of casing through which oil or gas, or both, is produced from a different producing horizon through the same well bore shall be regarded as another well.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.004. APPLICABILITY. The provisions in this chapter do not impair the authority of the commission to prevent waste under the oil and gas conservation laws of this state and do not repeal, modify, or impair any of the provisions relating to oil and gas conservation in Sections 85.002, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, and 85.381 through 85.385, Subchapter J of Chapter 85, and Subchapter P of Chapter 91.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 3, eff. September 1, 2007.

SUBCHAPTER B. WASTE OF GAS

Sec. 86.011. PROHIBITION AGAINST WASTE. The production, transportation, or use of gas in a manner, in an amount, or under conditions which constitute waste is unlawful and is prohibited.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.012. DEFINITION OF WASTE. (a) The term "waste" includes:

(1) the operation of an oil well or wells with an inefficient gas-oil ratio;

(2) the drowning with water of a stratum or part of a stratum capable of producing gas in paying quantities;

(3) permitting a gas well to burn wastefully;

(4) the creation of unnecessary fire hazards;

(5) physical waste or loss incident to or resulting from so drilling, equipping, or operating a well or wells as to reduce or tend to reduce the ultimate recovery of gas from any pool;

(6) the escape of gas from a well producing both oil and gas into the open air in excess of the amount that is necessary in the efficient drilling or operation of the well;

(7) the production of gas in excess of transportation or market facilities or reasonable market demand for the type of gas produced;

(8) the use of gas for the manufacture of carbon black without first having extracted the natural gasoline content from the gas, except it shall not be necessary to first extract the natural gasoline content from the gas where it is utilized in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(9) the use of sweet gas produced from a gas well for the manufacture of carbon black unless it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet and unless the sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas;

(10) permitting gas produced from a gas well to escape into the air before or after the gas has been processed for its gasoline content, unless authorized as provided in Section 86.185 of this code;

(11) the production of natural gas from a well producing oil from a stratum other than that in which the oil is found unless the gas is produced in a separate string of casing from that in which the oil is produced;

(12) the production of more than 100,000 cubic feet of gas to each barrel of crude petroleum oil unless the gas is put to one or more of the uses authorized for the type of gas so produced under allocations made by the commission or unless authorized as provided in Section 86.185 of this code; and

(13) underground waste or loss however caused and whether or not defined in other subdivisions of this section.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for

hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, Sec. 8, eff. Sept. 1, 1977; Acts 1979, 66th Leg., p. 674, ch. 300, Sec. 2, eff. May 29, 1979; Acts 1995, 74th Leg., ch. 870, Sec. 2, eff. Sept. 1, 1995.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 86.041. IN GENERAL. The commission has broad discretion in administering the provisions of this chapter and may adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter.

Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.042. RULES AND ORDERS. The commission shall adopt and enforce rules and orders to:

(1) conserve and prevent the waste of gas;

(2) prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas;

(3) require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata;

(4) provide for drilling wells and preserving a record of them;

(5) require wells to be drilled and operated in a manner that prevents injury to adjoining property;

(6) prevent gas and water from escaping from the strata in which they are found into other strata;

(7) require records to be kept and reports made;

(8) provide for the issuance of permits and other evidences of permission when the issuance of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and

(9) otherwise accomplish the purposes of this chapter.

Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.043. DETERMINING GAS-OIL RATIO. The commission may fix and determine the gas-oil ratio of all oil wells in the state but none of the provisions of this chapter may be construed to authorize the limitation of the production of marginal wells below the amount fixed by statute. If a restriction imposed by the commission on the production of oil from an oil well operates to increase the gas-oil ratio of the well so as to then classify it as a gas well under the provisions of this chapter, the well nevertheless shall be considered to be an oil well.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. PRODUCTION OF GAS

Sec. 86.081. REGULATION OF PRODUCTION. (a) For the protection of public and private interests, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall prorate and regulate the daily gas well production from a common reservoir if the commission finds that action to be necessary to:

(1) prevent waste; or

(2) adjust the correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas as permitted in this chapter.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may regulate all activities that are under its jurisdiction and associated with such commingled, separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if the accumulations were a single common reservoir; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate

accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2580, ch. 688, Sec. 3, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 3, eff. Aug. 28, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 1, eff. June 17, 2005.

Acts 2005, 79th Leg., Ch. 1119 (H.B. 2440), Sec. 1, eff. June 18, 2005.

Sec. 86.082. EXERCISE OF AUTHORITY TO PREVENT WASTE. The commission shall exercise its authority to prevent waste when the presence or imminence of waste is supported by a finding based on the evidence introduced at a hearing after proper notice.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.083. EXERCISE OF AUTHORITY TO ADJUST CORRELATIVE RIGHTS AND OPPORTUNITIES. The commission shall exercise its authority to adjust correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas when evidence introduced at a hearing after proper notice will support a finding made by the commission that the aggregate lawful volume of the open flow or daily potential capacity to produce of all gas wells located in a common reservoir is in excess of the daily reasonable market demand for gas from gas wells that may be produced from the common reservoir, to be used as permitted in this chapter.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.084. DETERMINATION OF STATUS OF PRODUCTION. (a) The commission, on written complaint by an affected party or on its own initiative, may determine the status of gas production from any reservoir in the state.

(b) If the commission finds that waste exists or is imminent in the production of gas from a reservoir, or that the capacity of the wells to produce gas from a reservoir exceeds the market demand for gas from the reservoir, the commission by proper order shall prorate and regulate the gas production from the reservoir on a reasonable basis.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 2, eff. June 17, 2005.

Sec. 86.085. DETERMINATION OF DEMAND AND VOLUME. On or before the last day of each month, the commission or a person authorized by the commission shall determine:

(1) the lawful market demand for gas to be produced from each prorated reservoir during the following month; and

(2) the volume of gas that can be produced without waste from each prorated reservoir and each well in the reservoir during the following month.

Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 270, Sec. 1, eff. May 24, 1993.
Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 3, eff. June 17, 2005.

Sec. 86.086. MONTHLY RESERVOIR ALLOWABLE. After determining demand for and volume of production from a prorated reservoir as provided in Section 86.085, the commission shall fix the monthly reservoir allowable of gas to be produced from the reservoir at the

lawful market demand for the gas or at the volume that can be produced from the reservoir without waste, whichever is the smaller quantity.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 4, eff. June 17, 2005.

Sec. 86.087. MONTHLY WELL ALLOWABLE. The monthly reservoir allowable shall be allocated among all wells entitled to produce gas from a prorated reservoir to give each well its fair share of the gas to be produced from the reservoir, but each well is restricted to the amount of gas that can be produced from it without waste. The volume of gas allocated to each well is the monthly allowable for that well.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 5, eff. June 17, 2005.

Sec. 86.088. DAILY ALLOWABLE. The daily market demand for gas and the daily allowable shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.089. FACTORS IN DETERMINING ALLOWABLE. (a) In determining the daily allowable production for each gas well in a prorated reservoir, the commission shall take into account:

(1) the size of the tract segregated with respect to the surface position and common ownership on which the gas well or wells are located;

(2) the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells

producing the same kind of gas in the same common reservoir or zone; and

(3) other factors that are pertinent.

(b) In determining the daily allowable production for each gas well, the commission shall not take into account the size of the tract on which any gas well or wells are located in excess of the efficient drainage area of the well or wells. The drainage area shall be determined by the commission.

(c) In ascertaining the drainage area of a well, the commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 2, eff. June 14, 1985.

Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 6, eff. June 17, 2005.

Sec. 86.090. AUTHORIZING OVERPRODUCTION AND UNDERPRODUCTION. (a) In order to adjust the correlative rights and opportunities of each owner to produce, use, and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion of the market demand fluctuates from month to month, the commission may permit the wells in the reservoir to be produced in excess of the monthly allowable, in accordance with the conditions and limitations set forth in Subsections (b), (c), (d), and (e) of this section, if no waste would be caused by such production.

(b) Except as authorized in Subsection (e) of this section, no well may be permitted in any one month to produce in excess of two times its monthly allowable, except if there exists or there is threatened a situation causing an increase in the demand for the gas from the reservoir which cannot be satisfied otherwise from the reservoir, then the commission may allow a well to be produced in excess of two times its monthly allowable.

(c) Except as authorized in Subsection (e) of this section, no well may ever be allowed to produce in excess of twice its allowable for more than two months in any period of six months beginning on the first day of March and September of each year. If a well has produced twice its allowable or more during a period of six months beginning on the first day of March or September, it shall be shut in or, by appropriate commission order, have its production restricted to a fractional part of its monthly allowable until its production and allowable are in balance.

(d) On the first day of March and September of each year, the commission shall restrict production from all wells that are then overproduced to the fractional part of their monthly allowable that will bring the accumulated allowables and the accumulated monthly production in balance during the next six months. If the overproduction is not balanced during that six-month period, the overproduced well shall be shut in or, by appropriate commission order, have its production restricted to a fractional part of its monthly allowable until its production and allowable are in balance.

(e) The commission by appropriate order may permit a gas well to be underproduced for a period of six consecutive months and may allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six-month period. If the underproduction is not balanced during this six-month period, the remaining accumulated underproduction may, by appropriate commission order, be produced in addition to the regular monthly allowable during subsequent consecutive six-month periods.

Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 1, eff. June 14, 1985.

Sec. 86.091. MARGINAL GAS WELL AND LIMITS ON WELL RESTRICTIONS. A "marginal gas well," as applied to a well classified by the commission as a gas well, means a well that is incapable of producing under normal operating conditions more than 250,000 cubic feet of gas per day. None of the provisions of this chapter shall require the commission to limit the production from a marginal gas well to a quantity less than its actual deliverability if the well:

(1) has a daily deliverability of 100,000 cubic feet of gas

or less; or

(2) is in a field for which special field rules are not in effect.

Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 745, Sec. 2, eff. June 14, 1985; Acts 1995, 74th Leg., ch. 361, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 299, Sec. 1, eff. May 26, 1997.

Sec. 86.093. EFFECT OF OIL AND GAS STRATUM ON GAS ONLY STRATUM. If gas is produced from one stratum and oil and gas are produced from another stratum in the same well bore, the commission shall take into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only. The commission may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to the well if it produced dry gas and may restrict the dry gas production accordingly.

Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.094. AUTHORITY TO INCREASE TAKE ABOVE ALLOWABLE. If unforeseen contingencies increase the demand for gas required by a distributor, transporter, or purchaser to an amount in excess of the total allowable production of the wells in a prorated reservoir to which the person is connected, the distributor, transporter, or purchaser may increase the person's take ratably from all these wells in order to supply the person's demand for gas, provided that notice of the increase and the amount of the increase are given to the commission within five days; and provided further, the commission shall adjust the inequality of withdrawals caused by the increase in fixing the allowable production of the various wells in the common reservoir or zone.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2005, 79th Leg., Ch. 881 (S.B. 1170), Sec. 7, eff. June 17,

2005.

Sec. 86.095. ZONING COMMON RESERVOIRS. (a) The commission shall zone a common reservoir if, on consideration of the evidence introduced at a hearing, it finds that either the prevention of waste or adjustment of correlative rights and opportunities, or both, as designated in Section 86.081 of this code, may be accomplished more adequately by zoning the common reservoir.

(b) If the commission zones a common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this chapter.

(c) If the commission zones a common reservoir, the commission:

(1) shall allocate to each zone its just proportion of the market demand for gas from the common reservoir;

(2) shall establish appropriate rules applicable to each zone;

(3) may adjust its orders to the practicable conditions that exist; and

(4) may enter any reasonable order necessary to effectuate the purposes of this chapter.

(d) The commission may segregate a sour gas area from a sweet gas area and is not required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.096. FAILURE TO USE OR SELL ALLOWABLE PRODUCTION. If the commission finds that the owner of a gas well failed or refused to use or sell the allowable production from his well when the owner was offered a connection or market for the gas at a reasonable price, the well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone in which it is located until the owner of the well signifies to the commission his desire to use or sell the gas. In all other cases, all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.097. PRODUCTION OF GAS FROM OIL WELL. No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.

Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. METER AND PRESSURE TESTS

Sec. 86.141. DUTY TO TEST GAS WELLS. The commission may require persons producing gas from any gas well to determine periodically through an appropriate test the deliverability and wellhead pressure of each gas well from which gas is produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 1, eff. Sept. 1, 1995.

Sec. 86.142. TEST REQUIREMENTS. A test to determine the deliverability and pressure of a gas well shall be made:

(1) under uniform and generally recognized methods; and

(2) under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 2, eff. Sept. 1, 1995.

Sec. 86.143. TEST REPORTS. (a) Verified reports of the tests to determine deliverability and pressure shall be filed with the commission within a time period after the end of the test period as set by the commission.

(b) The reports are a public record. They shall be kept on file with the commission for a period of time determined by the commission and shall be open to the inspection and examination of the public.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 26, Sec. 3, eff. Sept. 1, 1995.

Sec. 86.144. DEMANDING SECOND TEST. A person producing gas from the same common reservoir who is dissatisfied with the test as made and reported may demand that a second test be made in the manner provided in this subchapter and in the presence of the person making the demand or his representative.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.145. DUTY TO TEST METER. The commission shall require one of its duly authorized agents to inspect, read, or test any meter or meters through which gas is being measured or gauged on the request of a lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest gas is being produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. USE OF GAS

Sec. 86.181. USE OF SWEET GAS PRODUCED FROM GAS WELL. No sweet gas produced from a gas well may be used for any purpose except:

(1) light or fuel;

(2) efficient chemical manufacture, other than the manufacture of carbon black, provided that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(3) bona fide introduction of gas into oil or gas bearing horizon in order to maintain or increase the rock pressure, or otherwise increase the ultimate recovery of oil or gas from the horizon; and

(4) the extraction of natural gasoline when the residue is returned to the horizon from which it is produced.

Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.182. USE OF SOUR GAS. In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided:

(1) it is utilized in a plant producing a recovery of not less than one pound of carbon black to each 1,000 cubic feet of gas; and

(2) the gasoline content is removed and saved from the sour gas before the gas is used for carbon black.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.183. USE OF CASINGHEAD GAS. Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.184. USE AS GAS LIFT. (a) A producer of either sweet or sour gas or casinghead gas may use the gas as gas lift in the bona fide production of oil if the gas is not used in excess of 10,000 cubic feet per barrel of oil produced.

(b) To prevent waste in a case where the facts in the case warrant it, the commission may permit the use of additional quantities of gas to lift oil provided:

(1) all the gas used in excess of 10,000 cubic feet for each barrel of oil is processed for natural gasoline; and

(2) the residue is burned for carbon black when it is reproduced.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.185. PROHIBITION AGAINST GAS IN AIR. No gas from a gas well may be permitted to escape into the air after the expiration of 10 days from the time the gas is encountered in the gas well, or from the time of perforating the casing opposite a gas-bearing zone if casing is set through the zone, whichever is later, but the commission may permit the escape of gas into the air for an additional time if the operator of a well or other facility presents information to show the necessity for the escape; provided that the amount of gas which is flared under that authority is charged to the operator's allowable production. A necessity includes but is not limited to the following situations:

(1) cleaning a well of sand or acid or both following stimulation treatment of a well; and

(2) repairing or modifying a gas-gathering system.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, Sec. 9, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT; JUDICIAL REVIEW

Sec. 86.221. UNAUTHORIZED PRODUCTION PROHIBITED. No person may produce gas from a gas well in violation of the valid orders of the commission.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.222. PENALTIES. (a) Any person who violates a provision of this chapter or a rule or order adopted under this chapter is liable for a penalty of not more than:

(1) $10,000 for each offense when the provision, rule, or order pertains to safety or the prevention or control of pollution; or

(2) $1,000 for each offense when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) Each day a violation occurs constitutes a separate offense.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 86.223. SUIT FOR PENALTY. The penalty may be recovered with the cost of suit by the State of Texas through the attorney general or the county or district attorney when joined by the attorney general in a civil action instituted in Travis County, in the county in which the violation occurred, or in the county of residence of the defendant.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 86.224. SUIT FOR INJUNCTION. A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which the suit for penalty may be brought. The court may issue mandatory or prohibitory writs of injunction that the facts justify.

Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 86.225. JUDICIAL REVIEW. Any person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than trial de novo.

Acts 1977, 65th Leg., p. 2540, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 87. REGULATION OF SOUR NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 87.001. DEFINITIONS. In this chapter, the words "oil," "gas," "commission," "common reservoir," "gas well," "oil well," "sour gas," "sweet gas," "natural gasoline," "cubic foot of gas," and "casinghead gas" are defined as provided in Section 86.002 of this

code.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 87.011. RULES AND ORDERS. (a) In administering the provisions of this chapter, the commission shall hold hearings, make determinations, and promulgate rules and orders as provided in Sections 86.084-86.090 of this code and other laws of this state.

(b) After notice and hearing as provided by law, the commission shall promulgate any other rule or order it finds necessary to carry out the provisions of this chapter.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.012. VALIDITY. (a) Rules and orders adopted by the commission under the terms of this chapter are considered prima facie valid.

(b) A person affected by an order may sue to test the validity of the order adopted by the commission under this chapter in the same manner, on the same conditions, and in the same court or courts as prescribed for suits testing the validity of orders of the commission promulgated under the general oil conservation statutes of this state.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.013. HEARINGS. From time to time, the commission shall hold hearings, after proper notice, to hear evidence and to adopt rules and orders to enforce the provisions of this chapter.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.014. INSPECTION OF RECORDS; REPORTS. In addition to authority given by existing law, the commission or its agents may:

(1) inspect the books and records of any person who is affected by the provisions of this chapter; and

(2) require sworn reports to be filed from time to time as the commission finds necessary.

Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PRODUCTION OF SOUR GAS

Sec. 87.051. LIMITATION OF SOUR GAS PRODUCTION. No person may produce sour gas from any sour gas well in a reservoir producing both sweet and sour gas in excess of the daily allowable production for the gas well as fixed by the orders and schedules of the commission. The rate of production from a sour gas well is considered to be the daily average rate of production for the calendar month.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.052. MAXIMUM PRODUCTION OF SOUR GAS FOR CARBON BLACK MANUFACTURE. (a) In any common reservoir in the state producing both sweet and sour gas, there shall never be produced from the common reservoir for use in carbon black manufacture a maximum daily volume of sour gas from the gas wells in excess of 750 million cubic feet.

(b) The commission shall prorate the daily volume of sour gas from gas wells among all the sour gas wells in the reservoir to prevent cognizable and preventable drainage of gas from tracts of land in the sour gas producing area segregated as to surface position and common ownership on which the sour gas wells are located.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.053. EFFECT OF DEMAND BELOW MAXIMUM ALLOWABLE PRODUCTION. (a) If the daily demand for sour gas from gas wells for

use in carbon black manufacture is less than the daily maximum allowable permitted in Section 87.052 of this code, the total daily volume of gas from gas wells from the sour gas area for use in carbon black manufacture shall be equal to the daily demand.

(b) The commission shall determine the daily demand and prorate it among all the sour gas wells in the area as provided in Section 87.052 of this code.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.054. EFFECT OF DEMAND FOR OTHER PURPOSES THAN CARBON BLACK MANUFACTURE. (a) If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by law, other than the manufacture of carbon black, the additional demand shall be added to the daily demand for carbon black manufacture, and that sum shall constitute the daily volume of sour gas from gas wells that may be withdrawn from the common reservoir for utilization.

(b) The commission shall prorate the daily volume provided for in Subsection (a) of this section among the sour gas wells in the area on the basis set forth in Section 87.052 of this code.

Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. PLANTS EXTRACTING NATURAL GASOLINE

Sec. 87.091. PROHIBITED COMMINGLING OF GAS. In a plant for the extraction of natural gasoline content of gas, no sweet gas may be commingled with sour gas and no casinghead gas may be commingled with sweet gas or sour gas or both, except on the conditions and requirements stated in this subchapter.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.092. PERMIT REQUIRED. In any common reservoir in this state producing both sweet and sour gas, no person may operate a plant for the extraction of the natural gasoline content of gas in

which sweet gas and sour gas are commingled, or plant casinghead gas is commingled with either sweet gas or sour gas or both, until the person secures from the commission a permit authorizing the operation of the plant.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.093. ISSUANCE OF PERMIT. The commission shall issue a permit if it appears that the plant is being operated and the residue gas from the plant is and will be disposed of in accordance with the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.094. CANCELLATION OF PERMIT. (a) If it appears to the commission that a plant is operating in violation of any of the provisions of this subchapter, the commission shall cancel the permit issued to the plant.

(b) After the cancellation of the permit, no operator of the plant may commingle either sweet gas and sour gas or casinghead gas with sweet gas or sour gas in the plant for the purpose of extracting the natural gasoline content.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.095. RESIDUE GAS ALLOWED IN AIR. (a) Except as provided in Subsection (b) of this section, if a plant operating under this subchapter commingles casinghead gas with sweet gas or sour gas or both, the operator of the plant shall not blow, or permit to be blown, in the air any of the residue gas remaining after the gasoline content of the gas is extracted.

(b) The operator of a plant may blow in the air an amount of residue gas from the plant that is determined by the commission to be necessary to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.096. RESIDUE GAS: DETERMINATION BY COMMISSION. If a plant operating under this subchapter commingles casinghead gas with sweet gas or sweet gas with sour gas, the commission shall ascertain:

(1) the quantity of residue gas required to be used for fuel purposes in the efficient operation of the plant; and

(2) the quantity of residue gas required to be returned by the operator of the plant to the leases to which the plant is connected for use as fuel in the operation of the leases.

Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.097. USE OF RESIDUE GAS FOR OTHER PURPOSES. (a) The operator of the plant is required to use, or cause to be used, for one or more of the uses provided for sweet gas by law a quantity of the residue gas from the plant equal to the quantity of sweet gas taken into the plant for processing, less the extraction loss from the processing.

(b) The operator shall not be credited with use of residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of the residue gas found by the commission to be necessary for the efficient operation of the plant and return to the leases for fuel for lease operations.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. USE OF GAS WITHOUT EXTRACTION OF NATURAL GASOLINE

Sec. 87.131. USE OF SWEET GAS FOR CARBON BLACK MANUFACTURE. Sweet gas produced from any gas well in this state may be used without the prior extraction of its gasoline content for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black for each 1,000 cubic feet of gas.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.132. USE OF GAS FROM CERTAIN WELLS FOR CARBON BLACK MANUFACTURE. (a) Gas from any gas well completed on or before September 5, 1947, within a common reservoir producing both sweet and sour gas from which the gas was not sold off the leased premises to an interstate pipeline company during the year immediately preceding September 5, 1947, or gas from any gas well completed after September 5, 1947, within a common reservoir producing both sweet and sour gas, may be used for the manufacture of carbon black without the prior extraction of its natural gasoline content if:

(1) it is used in a plant producing an average recovery of not less than one and one-half pounds of carbon black for each 1,000 cubic feet of gas; and

(2) the royalty rate and market price paid for the gas at the wellhead at least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes.

(b) In arriving at the market price of sour gas, a reduction of not more than one-half cent per 1,000 cubic feet shall be allowed for purifying the gas to render it suitable for light and fuel purposes.

(c) If the gas is used by a producer, any royalty rate paid shall be paid on the same basis.

Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.134. EFFECT OF SUBCHAPTER. The provisions of this subchapter are cumulative of existing laws relating to the uses of gas and do not restrict or affect the manufacture of carbon black from processed sour gas as authorized by Section 86.182 of this code.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. USE OF GAS DETERMINED BY HYDROCARBON CONTENT

Sec. 87.171. GAS CONTAINING LOW HYDROCARBON CONTENT. Any

natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing less than one and one-half gallons of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.172. GAS CONTAINING HIGH HYDROCARBON CONTENT. (a) Except as provided in Subsection (b) of this section, no natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed without the prior extraction of its natural gasoline content.

(b) On the filing of an application and after proper notice and hearing as provided by law, the commission may authorize the use of any natural gas, including casinghead gas, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, in the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed if the commission finds it is unprofitable to first extract the natural gasoline content of the gas.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.173. ADDITIONAL EXTRACTION TO ALLEVIATE SHORTAGE. If a general shortage of propane or heavier liquid hydrocarbons occurs, the commission, after notice and hearing, may require additional extraction of hydrocarbons from the gas to alleviate the shortage,

but additional extraction shall not be required if it is not economically feasible to do so.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 87.174. APPLICABILITY OF THIS SUBCHAPTER. The provisions of this subchapter shall not apply to:

(1) gas produced from a common reservoir that contains both sweet and sour gas which was being lawfully used for the manufacture of carbon black under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section; or

(2) gas from gas wells located in these reservoirs which were entitled to be so used under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section.

Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. CARBON BLACK PLANTS

Sec. 87.211. PROHIBITED LOCATION. Unless adequate precaution is taken to minimize the emission of smoke from the plant, no channel-type carbon black plant shall be erected or constructed closer than five miles to:

(1) the limits of a city, town, or village incorporated at or before the time the erection or construction of the plant is begun; or

(2) a commercially operated citrus fruit orchard planted not less than one year before the time the erection or construction of the plant is commenced.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. ENFORCEMENT

Sec. 87.241. PENALTY. (a) A person who violates this chapter

is liable to a penalty of not more than $1,000 for each offense.

(b) Each day a violation occurs constitutes a separate offense.

(c) The penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the attorney general in Travis County, in the county in which the violation occurred, or in the county of residence of the defendant.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 3, eff. Sept. 1, 1983.

Sec. 87.242. INJUNCTIVE RELIEF. (a) A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought.

(b) The court shall issue the writs or prohibitory or mandatory injunctions that the facts justify.

Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 88. CONTROL OF OIL PROPERTY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 88.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Governmental agent" or "governmental agency" means the Railroad Commission of Texas and any other administrative governmental board and governmental agent to which the legislature delegates the duty of supervising the production of oil and gas in the State of Texas.

(3) "Oil property" means a well producing oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated, or controlled as a producing unit by the same person in the same locality, and any leasehold estate to the extent that it is owned, operated, and controlled by the same person.

Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. RULES

Sec. 88.011. ADOPTION OF RULES. (a) The governmental agency may promulgate and adopt rules:

(1) to provide for the method of measuring oil and gas produced from any well in this state and to provide for the type of measuring devices to be used in obtaining the measurement;

(2) for the inspection of all oil properties to ascertain that the prescribed measuring devices are installed, are in accurate working condition, and are being accurately used;

(3) to provide that no oil or gas is being permitted to leave the possession of the producer without first being accurately measured and an accurate record of production made and preserved;

(4) to provide that no oil is being produced from a well producing both oil and gas without burning a flare or flares if the installation and use of a flare or flares is required by the terms of this chapter;

(5) for the keeping of complete and accurate records correctly reflecting the amount of oil or gas or both produced from each oil property each calendar day and the disposition and method of disposition of all the oil and gas produced, and for the monthly filing with the governmental agency of monthly reports accurately reflecting the true facts with respect to all such matters; and

(6) for the inspection and examination by the governmental agency, or its agents, servants, and employees, of all oil properties and the records provided for in this chapter.

(b) The rules shall be adopted in the manner provided by law for adoption of rules of the commission.

Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.012. RULES AND ORDERS RELATING TO RECORDS AND REPORTS. The rules and orders of the governmental agency relating to records and reports shall prescribe the form in which the records and reports will be made and kept, but the records and reports shall contain the data and information provided for in this chapter.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.013. NOTICE BY PUBLICATION. (a) When the governmental agency adopts a rule under this chapter, the governmental agency shall publish a complete copy of the rule once each day for three consecutive days in three newspapers of general circulation in the state, to be selected by the governmental agency.

(b) Notice of any amendment, repeal, alteration, or modification of the order may be similarly adopted and will become effective after similar notice.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PRACTICES PROHIBITED IN THE PRODUCTION OF OIL AND GAS

Sec. 88.051. PRODUCTION PROHIBITED IN EXCESS OF ALLOWABLE AMOUNT. No person owning, leasing, operating, producing, or controlling an oil property or any oil well in this state may produce or cause to be produced on any day from any oil property or oil well any oil in excess of the amount allowed to be produced each day from the oil property or oil well under an order previously adopted by the governmental agency and in force at the time.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.052. PROHIBITED PASSAGE FROM CONTROL OF PRODUCER WITHOUT MEASUREMENT AND RECORD OF AMOUNT. No person owning, leasing, operating, or controlling an oil property in this state may permit the oil or gas produced to pass beyond the possession or control of that person to the possession or control of any other person without first accurately measuring the amount of the oil or gas and making and preserving an accurate record of the amount.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.053. PROHIBITED EVASION OR PREVENTION OF ACCURATE MEASUREMENT. No person owning, leasing, operating, or controlling an oil property in this state may use a method or device to evade or

prevent obtaining the accurate measurement as provided in Section 88.052 of this code.

Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.0531. CRIMINAL PENALTY. (a) A person who knowingly violates Section 88.052 or 88.053 of this code commits an offense.

(b) An offense under this section is a Class A misdemeanor unless the actor has been convicted previously under this section, in which event the offense is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 5231, ch. 960, Sec. 2, eff. Sept. 1, 1983.

Sec. 88.054. PASSAGE FROM CONTROL OF PRODUCER PROHIBITED IF TANK NOT UNDER HIS CONTROL. No person owning, leasing, operating, or controlling an oil property may permit oil produced by him in this state to pass from his possession or control to the possession or control of any other person except from a tank or tanks under the control of the person producing the oil.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.055. PRODUCTION PROHIBITED WITHOUT FLARE. If the gas from a well producing both oil and gas is not trapped and used and the gas is capable of being burned in a flare, no person owning, leasing, operating, or controlling an oil property in this state may produce oil from the well at any time without simultaneously and continuously burning a flare to consume all gas that otherwise would be permitted to escape into the open air. The Railroad Commission of Texas shall have the authority to grant exceptions to this section.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 565, Sec. 1, eff. June 14, 1989.

Sec. 88.056. IDENTIFYING SIGNS. Each oil property in this state, each tank owned or controlled by such person to which the property is connected, and each flare to which the property is connected shall be posted at all times with a sign written in the English language with letters at least one inch in height, stating:

(1) the name of the owner of the property;

(2) the operator of the property;

(3) the number of acres contained in the property; and

(4) the name by which the property is commonly known and identified.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

Sec. 88.091. ACCESS TO PROPERTY AND RECORDS. The governmental agency shall have access at all times to:

(1) the oil property of all persons for inspection and examination; and

(2) the records of all these persons for inspection, examination, and audit.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.092. PROHIBITED INTERFERENCE WITH ACCESS AND INSPECTION. No person may:

(1) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access to an oil property for inspection and examination;

(2) interfere with the inspection and examination;

(3) remove, tamper with, mutilate, or destroy a device, seal, or meter on an oil property placed there or used in the inspection and examination; or

(4) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access, for inspection, examination, and audit, to the books, documents, and records pertaining to, used in connection with, or required to be used in connection with an oil property.

Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.093. PROHIBITED EQUIPMENT OR ENCLOSURE. No person owning, leasing, operating, or controlling an oil property in this state may equip or enclose his oil property, or any part of his oil property, in a manner that:

(1) prevents inspection and examination; or

(2) prevents an inspection and examination from revealing the true facts with respect to:

(A) the amount of oil or oil and gas being produced from the oil property;

(B) the manner in which the oil property is being operated; or

(C) the manner and method by which the production from the oil property is produced, stored, or delivered from the possession or control of that person.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.094. PROHIBITED GIFT OR GRATUITY. No person may corruptly give, offer, or promise to give a member of the governmental agency, chief supervisor, deputy supervisor, or any agent or employee of the governmental agency a gift or gratuity with intent to influence the officer or person in his acts or conduct with respect to:

(1) enforcing any provision of the law applicable to oil and gas in force at the time in this state;

(2) enforcing any order or rule of the governmental agency adopted under the power and authority given to it; or

(3) the discharge of any duty imposed on him by the oil and gas laws, orders, and rules duly promulgated and in force at the time in this state.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. ENFORCEMENT; PENALTIES

Sec. 88.131. VENUE. The courts of the county in which the oil property or any part of the oil property is located and with respect to which a violation of the provisions of this chapter is charged, the courts of Travis County, or the courts of the county of the residence of any defendant, have jurisdiction of all prosecutions for violations of the provisions of this chapter.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 88.132. SERVICE OF PROCESS. (a) In a suit or action involving the enforcement of the conservation laws of this state or the orders of the commission affecting the conservation of the natural resources of this state, a Texas Ranger or an agent of the commission may serve civil or judicial process, citation, notice, warrant, subpoena, or writ, including process of every character in contempt proceedings, the same and as fully as a sheriff or constable of a county to whom the process, writ, notice, citation, subpoena, or warrant might be directed could within the limits of his own county.

(b) A ranger or an agent of the commission may serve the process anywhere in the State of Texas although it may be directed to "any sheriff or constable" of a particular county. He shall make the same return as any other officer, sign his name, and add under his name the title of "State Ranger" or "Agent, Railroad Commission of Texas," as the case may be, which is sufficient to make it valid if the writ otherwise is properly prepared.

(c) No fees are allowed the rangers or agents of the commission other than their regular salary or compensation.

Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.133. RESPONSIBILITY FOR COMPLIANCE AND LIABILITY TO PROSECUTION. The president of each corporation, the chief managing executive of each association, all active members of each firm and partnership, and all trustees of each trust subject to the provisions of this chapter shall be responsible for the compliance with the

terms of this chapter by the corporation, association, firm, partnership, or trust of which he is, respectively, president, chief managing executive, member, or trustee, and he shall be liable to prosecution under and subject to the criminal penalties provided in this chapter for violations of this chapter by the respective corporation, association, firm, partnership, or trust of which he has actual knowledge or to which he assents.

Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 88.134. PENALTIES. (a) A person who violates any of the provisions of Sections 88.091 through 88.093 of this code, or any person who fails to comply with any of the provisions of those sections, is guilty of a misdemeanor and on conviction shall be subject to a fine of not more than $500, or by confinement in the county jail for not more than six months, or by both.

(b) A person who violates any other provision of this chapter other than those covered by Subsection (a), a person who fails to comply with any of the other terms of this chapter, a person who fails to comply with the terms of a rule or order adopted by the governmental agency under the terms of this chapter, or a person who violates any of the rules or orders of the governmental agency adopted under the provisions of this chapter on conviction is considered guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for a term of not less than two nor more than four years.

Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.135, eff. September 1, 2009.

Sec. 88.135. CIVIL PENALTIES AND INJUNCTIONS. In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions as provided by Chapters 81 and 85 of

this code, including recovering civil penalties and seeking injunctive relief as provided by those chapters.

Added by Acts 1983, 68th Leg., p. 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983.

CHAPTER 89. ABANDONED WELLS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 89.001. POLICY. The conservation and development of all the natural resources of this state are declared to be a public right and duty. It is also declared that the protection of water and land of the state against pollution or the escape of oil or gas is in the public interest. In the exercise of the police power of the state, it is necessary and desirable to provide additional means so that wells that are drilled for the exploration, development, or production of oil or gas, or as injection or salt water disposal wells, and that have been abandoned and are leaking salt water, oil, gas, or other deleterious substances into freshwater formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.002. DEFINITIONS. (a) In this chapter:

(1) "Well" means a hole drilled for the purpose of:

(A) producing oil or gas;

(B) injecting fluid or gas in the ground in connection with the exploration or production of oil and gas;

(C) obtaining geological information by taking cores or through seismic operations; or

(D) producing geothermal energy and associated resources that are subject to the jurisdiction of the Railroad Commission of Texas.

(2) "Operator" means a person who assumes responsibility for the physical operation and control of a well as shown by a form the person files with the commission and the commission approves. The commission may not require a person to assume responsibility for a well as a condition to being permitted to assume responsibility for

another well. In the event of a sale or conveyance of an unplugged well or the right to operate an unplugged well, a person ceases being the operator for the purpose of Section 89.011 only if the well was in compliance with commission rules relating to safety or the prevention or control of pollution at the time of sale or conveyance and once the person who acquires the well or right to operate the well:

(A) specifically identifies the well as a well for which the person assumes plugging responsibility on forms required and approved by the commission;

(B) has a commission-approved organization report as required by Section 91.142;

(C) has a commission-approved bond, letter of credit, or cash deposit under Sections 91.103-91.107 covering the well; and

(D) places the well in compliance with commission rules.

(3) "Nonoperator" means a person who owns a working interest in a well at the time the well is required to be plugged pursuant to commission rules and is not an operator as defined in Subdivision (2) of this subsection.

(4) "Commission" means the Railroad Commission of Texas.

(5) "Well-site equipment" means any production-related equipment or materials specific to the well being plugged, including motors, pumps, pump jacks, tanks, tank batteries, separators, compressors, casing, tubing, and rods.

(6) "Lease" means the lease on which a well made the subject of a plugging contract is located.

(7) "Delinquent inactive well" means an inactive well for which, after notice and opportunity for a hearing, the commission has not extended the plugging deadline.

(8) "Plugging" includes replugging.

(9) "Cost calculation for plugging an inactive well" means the commission's calculated cost for each foot of well depth plugged based on average actual plugging costs for wells reported by the commission for the preceding state fiscal year for the commission oil and gas division district in which the inactive well is located.

(10) "Enhanced oil recovery project":

(A) means:

(i) a commission-approved project that uses any process for the displacement of oil or other hydrocarbons from a

reservoir other than primary recovery and includes the use of an immiscible, miscible, chemical, thermal, or biological process;

(ii) a certified project described by Section 202.054, Tax Code; or

(iii) any other project approved by the commission for enhanced oil recovery; and

(B) does not include a water disposal project.

(11) "Good faith claim" means a factually supported claim based on a recognized legal theory to a continuing possessory right in a mineral estate, such as evidence of a currently valid oil and gas lease or a recorded deed conveying a fee interest in the mineral estate.

(12) "Inactive well" means an unplugged well that has had no reported production, disposal, injection, or other permitted activity for a period of greater than 12 months.

(13) "Physically terminated electric service to the well's production site" means that electric service to an inactive well site has been disconnected at a point on the electric service lines most distant from the production site toward the main supply line in a manner that will not interfere with electrical supply to adjacent operations, including cathodic protection units.

(b) The terms operator and nonoperator as defined in this section do not mean a royalty interest owner or an overriding royalty interest owner.

Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 4, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5406, ch. 1002, Sec. 1, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 882, Sec. 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 515, Sec. 1, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 89, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 11, eff. Sept. 1, 2004.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 1, eff. September 1, 2009.

Sec. 89.003. APPLICABILITY. The provisions of this chapter do not alter causes of action arising before August 30, 1965.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

SUBCHAPTER B. DUTY TO PLUG WELLS

Sec. 89.011. DUTY OF OPERATOR. (a) The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of the plugging.

(b) If useable quality water zones are present, the operator shall verify the placement of the plug at the base of the deepest fresh water zone required to be protected. The well is considered to have been properly plugged only when the verification is satisfactory and meets commission requirements.

(c) If, for the use of the surface owner, the operator of the well plugs the well back to produced fresh water, the duty of the operator to properly plug the well ends only when:

(1) the well has been properly plugged in accordance with commission requirements; and

(2) the surface owner has obtained a permit for the well from the groundwater conservation district, if applicable.

(d) Subsections (b) and (c) apply only to wells plugged on or after the effective date of this Act.

(e) The duty of a person to plug an unplugged well that has ceased operation ends only if the person's interest in the well is sold or conveyed while the well is in compliance with rules of the commission relating to safety or the prevention or control of pollution and the provisions of Sections 89.002(a)(2)(A)-(D) have been met. The person acquiring the seller's interest through such a sale or conveyance succeeds the seller as the operator of the well for the purpose of plugging responsibility once the provisions of Sections 89.002(a)(2)(A)-(D) have been met.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 882, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 89, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 12, eff. Sept. 1, 2001.

Sec. 89.012. DUTY OF NONOPERATOR. If the operator of a well fails to comply with Section 89.011 of this code, each nonoperator is responsible for his proportionate share of the cost of the proper

plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B-1. PLUGGING OF CERTAIN INACTIVE WELLS

Sec. 89.021. APPLICABILITY. This subchapter does not apply to a bay or offshore well as defined by commission rules.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Sec. 89.022. PLUGGING OF INACTIVE WELLS REQUIRED. (a) Except as provided by Section 89.023, on or before the date the operator is required to renew the operator's organization report required by Section 91.142, an operator of an inactive well must plug the well in accordance with statutes and commission rules in effect at the time of plugging.

(b) Notwithstanding Subsection (a), a person who assumes responsibility for the physical operation and control of an existing inactive well must satisfy the requirements of Sections 89.023(a)(1) and (3) not later than six months after the date the commission approves the initial form described by Section 89.002(a)(2) and filed with the commission under which the person assumes responsibility for the well.

(c) The commission may not renew or approve the organization report required by Section 91.142 for an operator that fails to comply with the requirements of this subchapter.

(d) Before the commission issues an order refusing to renew an operator's organization report under Subsection (c), an authorized commission employee or a person designated by the commission for that purpose must determine whether the operator has failed to comply with the requirements of this subchapter. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal on that ground, the authorized commission employee or designated person must:

(1) notify the operator of the determination;

(2) provide the operator with a written statement of the

reasons the organization report does not qualify for renewal; and

(3) notify the operator that the operator has 90 days to comply with the requirements of this subchapter.

(e) After the expiration of the period specified by Subsection (d)(3), the authorized commission employee or designated person shall determine whether the organization report qualifies for renewal and notify the operator of the determination. If the authorized commission employee or designated person determines that the organization report does not qualify for renewal because the operator has continued to fail to comply with the requirements of this subchapter, the operator, not later than the 30th day after the date of the determination, may request a hearing regarding the determination. The operator shall pay the costs associated with a hearing requested under this subsection.

(f) If the commission determines following the hearing that the operator has failed to comply with the requirements of this subchapter or the operator fails to file a timely request for a hearing, the commission by order shall refuse to renew the organization report. The organization report remains in effect until the commission's order becomes final.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 1, eff. June 17, 2011.

Sec. 89.023. EXTENSION OF DEADLINE FOR PLUGGING INACTIVE WELL. (a) The commission may grant an extension of the deadline for plugging an inactive well if the operator maintains a current organization report with the commission as required by Section 91.142 and if, on or before the date of renewal of the operator's organization report as required by that section, the operator files with the commission an application for an extension that includes:

(1) an affirmation that complies with Section 89.029;

(2) a statement that the operator has, and on request will provide, evidence of a good faith claim to a continuing right to operate the well; and

(3) at least one of the following:

(A) documentation that since the preceding date that the operator's organization report was required to be renewed the operator has plugged, or restored to active operation as defined by commission rule, a number of inactive wells equal to or greater than 10 percent of the number of inactive wells operated by the operator on that date;

(B) an abeyance of plugging report on a form approved by the commission that:

(i) is in the form of a certification signed by a person licensed by the Texas Board of Professional Engineers and Land Surveyors as an engineer or by the Texas Board of Professional Geoscientists;

(ii) includes:

(a) an affirmation by the licensed person that the well has:

(1) a reasonable expectation of economic value in excess of the cost of plugging the well for the duration of the period covered by the report, based on the cost calculation for plugging an inactive well; and

(2) a reasonable expectation of being restored to a beneficial use that will prevent waste of oil or gas resources that otherwise would not be produced if the well were plugged; and

(b) appropriate documentation demonstrating the basis for the affirmation of the well's future utility; and

(iii) specifies the field and the covered wells within that field in a format prescribed by the commission;

(C) a statement that the well is part of an enhanced oil recovery project;

(D) if the operator of the well is not currently otherwise required by commission rule or order to conduct a fluid level or hydraulic pressure test of the well, documentation of the results of a successful fluid level or hydraulic pressure test of the well conducted in accordance with the commission's rules in effect at the time the test is conducted;

(E) a supplemental bond, letter of credit, or cash deposit sufficient for each well specified in the application that:

(i) complies with the requirements of Chapter 91; and

(ii) is of an amount at least equal to the cost

calculation for plugging an inactive well for each well specified in the application;

(F) documentation of the deposit with the commission each time the operator files an application of an amount of escrow funds as prescribed by commission rule that equal at least 10 percent of the total cost calculation for plugging an inactive well for each well specified in the application; or

(G) if the operator is a publicly traded entity:

(i) the following documents:

(a) a copy of the operator's federal documents filed to comply with Financial Accounting Standards Board Statement No. 143, Accounting for Asset Retirement Obligations; and

(b) an original, executed Uniform Commercial Code Form 1 Financing Statement, filed with the secretary of state, that:

(1) names the operator as the "debtor" and the Railroad Commission of Texas as the "secured creditor"; and

(2) specifies the funds covered by the documents described by Sub-subparagraph (a) in the amount of the cost calculation for plugging an inactive well for each well specified in the application; or

(ii) a blanket bond in the amount of the lesser of:

(a) the cost calculation for plugging any inactive wells; or

(b) $2 million.

(b) Notwithstanding Subsection (a), an operator may not obtain an extension of the deadline for plugging an inactive well by complying with that subsection if the plugging of the well is otherwise required by commission rules or orders.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 2, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 1232 (H.B. 1523), Sec. 2.11, eff. September 1, 2019.

Sec. 89.024. ABEYANCE OF PLUGGING REPORT. (a) An abeyance of

plugging report filed under Section 89.023(a)(3)(B) is valid for a period of not more than five years.

(b) An abeyance of plugging report may cover more than one well in a field but may not cover more than one field.

(c) An abeyance of plugging report may not be transferred to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new abeyance of plugging report or otherwise comply with the requirements of this subchapter on or before the deadline provided by Section 89.022(b). This subsection does not prohibit the transfer of an abeyance of plugging report in the event of a change of name of an operator.

(d) An operator who files an abeyance of plugging report must pay an annual fee of $100 for each well covered by the report. A fee collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.07, eff. September 28, 2011.

Sec. 89.025. ENHANCED OIL RECOVERY PROJECT. (a) For purposes of Section 89.023(a)(3)(C), an inactive well is considered to be part of an enhanced oil recovery project if the well is located on a unit or lease or in a field associated with such a project.

(b) A statement that an inactive well is part of an enhanced oil recovery project may not be transferred to a new operator of an existing inactive well. A new operator of an existing inactive well must file a new statement that the well is part of such a project or otherwise comply with the requirements of this subchapter on or before the deadline provided by Section 89.022(b). This subsection does not prohibit the transfer of a statement that a well is part of an enhanced oil recovery project in the event of a change of name of an operator.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 4, eff. June 17, 2011.

Sec. 89.026. FLUID LEVEL OR HYDRAULIC PRESSURE TEST. (a) Documentation filed under Section 89.023(a)(3)(D) of the results of a successful fluid level test is valid for a period of one year from the date of the test. Documentation filed under that section of the results of a successful hydraulic pressure test is valid for a period of not more than five years from the date of the test.

(b) The operator must notify the office of the commission oil and gas division district in which an inactive well is located at least three days before the date the operator conducts a fluid level or hydraulic pressure test of the well and may not conduct the test without the approval of the office. The commission may require that a test be witnessed by a commission employee.

(c) Documentation of the results of a successful fluid level or hydraulic pressure test may be transferred to a new operator of an existing inactive well.

(d) An operator who files documentation described by Subsection (a) must pay an annual fee of $50 for each well covered by the documentation. A fee collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 5, eff. June 17, 2011.
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.08, eff. September 28, 2011.

Sec. 89.027. SUPPLEMENTAL FINANCIAL ASSURANCE. (a) A supplemental bond, letter of credit, or cash deposit filed under Section 89.023(a)(3)(E) is in addition to any other financial assurance otherwise required of the operator or for the well.

(b) A supplemental bond, letter of credit, or cash deposit may not be transferred to a new operator of an existing inactive well. A

new operator of an existing inactive well must file a new supplemental bond, letter of credit, or cash deposit or otherwise comply with the requirements of this subchapter by the deadline provided by Section 89.022(b).

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 6, eff. June 17, 2011.

Sec. 89.028. ESCROW FUNDS. (a) Escrow funds described by Section 89.023(a)(3)(F) must be deposited with the commission each time an operator files an application for an extension of the deadline for plugging an inactive well.

(b) Escrow funds deposited with the commission may be released only with the approval of the commission as prescribed by commission rule.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 562 (H.B. 3134), Sec. 7, eff. June 17, 2011.

Sec. 89.029. AFFIRMATION REGARDING SURFACE REQUIREMENTS. (a) An application for an extension of the deadline for plugging an inactive well must include a written affirmation by the operator:

(1) that the operator has physically terminated electric service to the well's production site; and

(2) stating the following, as applicable, if the operator does not own the surface of the land on which the well is located:

(A) if the well has been inactive for at least five years but for less than 10 years as of the date of renewal of the operator's organization report, that the operator has emptied or purged of production fluids all piping, tanks, vessels, and equipment associated with and exclusive to the well; or

(B) if the well has been inactive for at least 10 years as of the date of renewal of the operator's organization report, that

the operator has removed all surface process equipment and related piping, tanks, tank batteries, pump jacks, headers, and fences, as well as junk and trash as defined by commission rule, associated with and exclusive to the well.

(b) An operator of an inactive well shall leave a clearly visible marker at the wellhead of the well.

(c) The commission shall adopt rules regulating the transfer of material described by Subsection (a)(2)(B) and restricting its accumulation on an active lease.

(d) Notwithstanding Subsection (a), an operator may be eligible for a temporary extension of the deadline for plugging an inactive well or a temporary exemption from the requirements of Subsection (a) as provided by commission rule if the operator is unable to comply with the requirements of that subsection because of safety concerns or required maintenance of the well site and the operator includes with the application a written affirmation of the facts regarding the safety concerns or maintenance.

(e) An operator may be eligible for an extension of the deadline for plugging a well without complying with Subsection (a)(2)(B) if the well is located on a unit or lease or in a field associated with an enhanced oil recovery project and the operator includes a statement in the written affirmation that the well is part of such a project. The exemption provided by this subsection applies only to the equipment required for the project.

(f) Notwithstanding the other provisions of this subchapter, the commission shall adopt rules providing for the phase-in of the duty to comply with Subsection (a)(2)(B) over a period of five years beginning September 1, 2010. The rules must require the operators of one-fifth of the wells that are subject to that subsection in each year during the phase-in period to comply with that subsection.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

Sec. 89.030. REVOCATION OF EXTENSION OF DEADLINE FOR PLUGGING INACTIVE WELL. The commission may revoke an extension of the deadline for plugging an inactive well granted under this subchapter if the commission determines, after notice and an opportunity for a hearing, that the applicant is ineligible for the extension under the

commission's rules or orders.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 2, eff. September 1, 2009.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

Sec. 89.041. DETERMINING PROPER PLUGGING. If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission may determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011 or Section 89.012 of this code.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.042. COMMISSION ORDER TO PLUG. (a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) Repealed by Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5409, ch. 1002, Sec. 3, eff. Aug. 29, 1983.

Sec. 89.043. PLUGGING BY COMMISSION. (a) If the commission determines at a hearing under Section 89.041 of this code that a well

has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator nor nonoperator properly plugged the well, and

(A) neither the operator nor nonoperator can be found; or

(B) neither the operator nor nonoperator has assets with which to properly plug the well.

(b) If a well is leaking salt water, oil, or gas or is likely to leak salt water, oil, or gas, and the leakage will cause or is likely to cause a serious threat of pollution or injury to the public health, the commission, through its employees or agents, may direct the operator to take remedial action or to plug the well or may plug or replug the well without holding a hearing under Section 89.041 of this code or giving notice under Subsection (c) of this section.

(c) Not later than the 30th day before the date the commission enters into a contract to plug a delinquent inactive well, the commission shall send a notice by certified mail to the operator of the well at the address last reported to the commission as required by Section 91.142 and commission rules. The notice shall direct the operator to plug the well and shall state that:

(1) the commission may plug the well and foreclose its statutory lien under Section 89.083 unless the operator requests a hearing not later than the 10th day after the date the operator receives the notice;

(2) if the commission forecloses its statutory lien under Section 89.083, all well-site equipment will be presumed to have been abandoned and the commission may dispose of the equipment and hydrocarbons from the well as provided by Section 89.085;

(3) if the commission plugs the well, the commission:

(A) by order may require the operator to reimburse the commission for the plugging costs; or

(B) may request the attorney general to file suit against the operator to recover those costs;

(4) the commission has a statutory lien on all well-site equipment under Section 89.083; and

(5) the lien described by Subdivision (4) is foreclosed by operation of law if the commission does not receive a valid and timely request for a hearing before the 15th day after the date the notice is mailed.

(d) The operator of a well made the subject of a prior commission final order directing that it be plugged is not entitled to a second hearing under this section.

(e) The commission shall file for record a copy of the notice in the office of the county clerk of the county in which the well is located. The notice filed with the county need not be acknowledged. The copy of the notice filed in the office of the county clerk must contain the section, block, survey, and abstract number, when available to the commission, of the land on which the well is located. The clerk shall record the notice in the real property records of the county. The commission shall not be charged a fee for the filing or recording of the notice. The commission shall furnish a copy of the notice to a holder of a lien on the well or a nonoperator on that person's request. For purposes of title insurance policies issued under authority of Title 11, Insurance Code, this notice is not a notice of enforcement or violation of law, ordinance, or governmental regulation unless the notice contains a legally sufficient description of the specific land on which the well is located.

(f) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (c)(3)(A).

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1993, 73rd Leg., ch. 515, Sec. 2, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 928, Sec. 1, eff. Aug. 28, 1995; Acts 1999, 76th Leg., ch. 29, Sec. 1, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 1, eff. May 10, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 13, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.147, eff. September 1, 2005.

Sec. 89.044. RIGHT TO ENTER ON LAND. (a) The commission or its employees or agents, the operator, or the nonoperator, on proper identification, may enter the land of another for the purpose of plugging or replugging a well that has not been properly plugged.

(b) A prospective operator who has been authorized under Section 89.047 to conduct a surface inspection of a well, on proper identification, may enter the land of another for the sole purpose of conducting the inspection.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.
Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 3, eff. January 1, 2006.

Sec. 89.045. LIABILITY FOR DAMAGES. The commission and its employees and agents, the operator, and the nonoperator are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out this chapter.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.046. PENALTIES AND OTHER RELIEF. The plugging or replugging of a well by the commission does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to plug the well.

Added by Acts 1983, 68th Leg., p. 5256, ch. 967, Sec. 5, eff. Sept. 1, 1983.

Sec. 89.047. ORPHANED WELL REDUCTION PROGRAM. (a) In this

section:

(1) "Depth of the well" means the vertical depth of a well as measured in linear feet from the surface to the lowest perforation of the casing of the well that is within the commission-designated correlative interval for the field for which the well is issued a permit.

(2) "Operator in good standing" means an operator who:

(A) has a commission-approved organization report;

(B) is the designated operator of at least one well within the jurisdiction of the commission;

(C) has filed with the commission under Section 91.104 a bond, letter of credit, or cash deposit in an amount sufficient to qualify to operate one or more additional wells; and

(D) is not the subject of a commission or court order regarding a violation of a commission rule with which the operator has not complied or a complaint that has been docketed by the commission alleging a violation of a commission rule.

(3) "Orphaned well" means a well:

(A) for which the commission has issued a permit;

(B) for which production of oil or gas or another activity under the jurisdiction of the commission has not been reported to the commission for the preceding 12 months; and

(C) whose operator's commission-approved organization report has lapsed.

(4) "Producing well" means a well classified by the commission as an oil or gas well in accordance with commission rules.

(5) "Service well" means a well for which the commission has issued a permit that is not a producing well. The term includes an injection, disposal, or brine mining well.

(b) A person who is considering assumption of operatorship and regulatory responsibility for an orphaned well may nominate the well under consideration by filing a request on a form prescribed by the commission notifying the commission that the person seeks authority to conduct a surface inspection of the well to determine whether the person desires to be designated by the commission as the operator of the well.

(c) If the person is an operator in good standing and the well is not already subject to a nomination, the commission shall accept the nomination and issue a written confirmation to the person of the person's authority to conduct a surface inspection of the nominated

well for a stated period not to exceed 30 days.

(d) A person to whom a confirmation is issued under Subsection (c) may conduct a surface inspection of the well. The person must deliver written notice to the owner of record of the surface estate and any occupant of the tract on which the well is located at least three days before the date of the inspection. The notice must:

(1) identify the orphaned well;

(2) state the name, address, and telephone number of the person;

(3) state the date the person intends to conduct the surface inspection;

(4) state the name of at least one representative of the person who will participate in the surface inspection; and

(5) state that the person intends to inspect the orphaned well in accordance with this section for the purpose of assessing the current status and viability of the well.

(e) In conducting a surface inspection of the orphaned well, the person may visually inspect the well and all related equipment, tanks, and other facilities and may conduct noninvasive testing such as using a gauge to determine the pressure present at the wellhead but may not produce oil or gas from the well, reenter the well, pull tubing from or perform any other type of downhole work on the well, conduct a salvage operation on the well, or remove any tangible item from the well site.

(f) The commission shall designate the person as the operator of the well if the person files with the commission:

(1) a factually supported claim based on a recognized legal theory to a continuing possessory right in the mineral estate accessed by the well, such as evidence of a current oil and gas lease or a recorded deed conveying a fee interest in the mineral estate;

(2) a completed certificate of compliance; and

(3) a nonrefundable fee in the amount of $250.

(g) A fee collected under Subsection (f) shall be deposited to the credit of the general revenue fund and may be appropriated only to the commission to be used to enforce the laws and rules concerning oil and gas conservation and waste and pollution prevention.

(h) A person who is designated as the operator of an orphaned well on or after January 1, 2006, and not later than December 31, 2007, is entitled to receive:

(1) a nontransferable exemption from severance taxes for

all future production from the well as provided by Section 202.060, Tax Code;

(2) a nontransferable exemption from the fees provided by Sections 81.116 and 81.117 for all future production from the well; and

(3) a payment from the commission in an amount equal to the depth of the well multiplied by 50 cents for each foot of well depth if, not later than the third anniversary of the date the commission designates the person as the operator of the well, the person brings the well back into continuous active operation or plugs the well in accordance with commission rules.

(i) A well is considered to be in continuous active operation for purposes of Subsection (h)(3) if:

(1) the well is a producing well and the well has produced at least 10 barrels of oil or 100 mcf of gas per month for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission; or

(2) the well is a service well and the well has been used for the disposal or injection of oil and gas wastes or another purpose related to the production of oil or gas for at least three consecutive months as shown in the records of the commission and as authorized by a permit issued by the commission.

(j) The commission shall make payments to operators under Subsection (h)(3) annually in the same order the commission determines the operators to be entitled to the payments. The aggregate amount of payments in a state fiscal year under that subsection may not exceed $500,000. An operator may not receive:

(1) more than one payment under that subsection for the same well; or

(2) cumulative payments in an amount that exceeds the amount of the bond, letter of credit, or cash deposit the operator has filed with the commission under Section 91.104.

Added by Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 4, eff. January 1, 2006.

Sec. 89.048. PLUGGING OF WELL BY SURFACE ESTATE OWNER. (a) In this section, "orphaned well" has the meaning assigned by Section 89.047.

(b) The owner of an interest in the surface estate of a tract of land on which an orphaned well is located may contract with a commission-approved well plugger to plug the well.

(c) If the surface estate owner enters into a contract under Subsection (b), the well plugger shall:

(1) not later than the 30th day before the date the well is plugged, mail notice of its intent to plug the well to the operator of the well at the operator's address as shown by the records of the commission;

(2) assume responsibility for the physical operation and control of the well as shown by a form the person files with the commission and the commission approves;

(3) file a bond, letter of credit, or cash deposit covering the well as required by Section 91.107; and

(4) plug the well in accordance with commission rules.

(d) On successful plugging of the well by the well plugger, the surface estate owner may submit documentation to the commission of the cost of the well-plugging operation. The commission shall reimburse the surface estate owner from money in the oil and gas regulation and cleanup fund in an amount not to exceed 50 percent of the lesser of:

(1) the documented well-plugging costs; or

(2) the average cost incurred by the commission in the preceding 24 months in plugging similar wells located in the same general area.

(e) The commission shall adopt any rules reasonably necessary to implement this section.

Added by Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 4, eff. January 1, 2006.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.09, eff. September 28, 2011.

SUBCHAPTER D. COSTS OF PLUGGING WELLS

Sec. 89.081. CAUSE OF ACTION FOR DISPROPORTIONATE SHARE OF COST. If an operator or nonoperator owns only a partial interest in the well or oil and gas and the operator or nonoperator pays a larger proportion of the cost of plugging the well than his proportionate

interest in the well or oil and gas, he has a cause of action against the other operators and nonoperators for their proportionate shares of the cost of plugging.

Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983.

Sec. 89.083. FIRST LIEN ON EQUIPMENT; CAUSE OF ACTION IF COMMISSION PLUGS. (a) If a well has not been plugged by the deadline for plugging established by commission rules, the state has a first lien, superior to all other preexisting and subsequent liens and security interests, on the operator's and nonoperator's interests in well-site equipment, in the amount of the total costs of removing well-site equipment from the well, plugging the well, and transporting, storing, and disposing of the well-site equipment.

(b) The lien arises on the date by which the well is required to be plugged under commission rules.

(c) The lien may be foreclosed by judicial action or commission order at any time after notice and an opportunity for a hearing. If notice is mailed under Section 89.043 and if the lien is not previously foreclosed, the lien is foreclosed by operation of law on the 15th day after the date the notice is mailed unless the commission has received a valid and timely request for a hearing before that date. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders or nonoperators before foreclosing the lien.

(d) The lien is extinguished if the well is plugged or otherwise brought into compliance in accordance with commission rules by any person authorized to do so before the commission enters into a plugging contract.

(e) The lien is extinguished as to any item of well-site equipment that is lawfully removed by any person other than the operator or a nonoperator pursuant to a lien, lease, judgment, written contract, or security agreement before the commission sends notice under Section 89.043(c). A person may not remove from an inactive well site any equipment necessary to prevent the well from serving as a conduit for the passage of oil, gas, saltwater, oil and

gas wastes, or freshwater from one stratum or formation to another or to the surface or from the surface downward except in the course of plugging in accordance with commission rules.

(f) If the commission plugs a well under Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well and not recovered under Section 89.085 of this code or through reimbursement to the commission.

(g) The cause of action is:

(1) first, against the operator, to be secured by a first lien, superior to all preexisting and subsequent liens and security interests, on the operator's interest in the oil and gas in the land and the fixtures, machinery, and equipment found or used on the land where the well is located; and

(2) second, against a nonoperator at the time the well should have been plugged, to be secured by a lien on the nonoperator's interest in the oil and gas in the land. A nonoperator may be made a party defendant in the suit against the operator.

(h) The commission:

(1) by order may require the operator and any nonoperator to reimburse the commission for all reasonable expenses incurred in plugging a well; or

(2) may request the attorney general to file suit against the operator and any nonoperator to recover those expenses.

(i) At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under Subsection (h)(1).

(j) Money collected in a suit under this section shall be deposited in the oil and gas regulation and cleanup fund.

(k) A civil action for reimbursement under this section may be brought in Travis County, the county in which the plugged well is located, or the county in which any defendant resides.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1983, 68th Leg., p. 5407, ch. 1002, Sec. 2, eff. Aug. 29, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 6, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 515, Sec. 3, eff. Jan. 1, 1994; Acts 1999, 76th Leg., ch. 29, Sec. 2, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 57, Sec. 2, eff. May 10, 1999; Acts 2001,

77th Leg., ch. 1233, Sec. 14, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.10, eff. September 28, 2011.

Sec. 89.084. MONEY PAID COMMISSION BY PRIVATE PERSON. (a) The commission may accept money from private persons and use the money to plug or replug a well.

(b) Paying money to the commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the commission is not admissible against the person in a suit in which the person's obligation to plug a well is an issue and introducing the evidence is a compulsory ground for mistrial.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 89.085. POSSESSION AND SALE OF EQUIPMENT TO COVER PLUGGING COSTS. (a) When the commission forecloses its lien under Section 89.083 on a delinquent inactive well, well-site equipment and any amount of hydrocarbons from the well that is stored on the lease are presumed to have been abandoned and may be disposed of by the commission in a commercially reasonable manner by either or both of the following methods:

(1) entering into a plugging contract that provides that the person plugging or cleaning up pollution, or both, will take title to well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation in exchange for a sum of money deducted as a credit from the contract price; or

(2) selling the well-site equipment, hydrocarbons from the well that are stored on the lease, or hydrocarbons recovered during the plugging operation at a public auction or a public or private sale.

(b) The commission shall assign separate costs to:

(1) removing well-site equipment;

(2) plugging the well; and

(3) transporting, storing, and disposing of the well-site equipment.

(c) The commission shall dispose of well-site equipment or hydrocarbons under this section at a price or value that reflects the generally recognized market value of the equipment or hydrocarbons, with allowances for physical condition.

(d) The commission shall deposit money received from the sale of well-site equipment or hydrocarbons under this section to the credit of the oil and gas regulation and cleanup fund. The commission shall separately account for money and credit received for each well.

(e) A person who acquires well-site equipment or hydrocarbons under this section by sale or contract receives a clear title, free of all prior legal or equitable claims of whatever nature, whether perfected or inchoate.

(f) Not later than the 30th day after the date well-site equipment or hydrocarbons are disposed of under this section, the commission shall mail a notice by first class mail to the operator of the well at the address last reported to the commission as required by Section 91.142 of this code and commission rules and, on request, to any lienholder or nonoperator.

(g) The notice required by Subsection (f) of this section must include:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the abstract number of the property on which the lease is situated;

(5) the commission lease or gas well identification number or drilling permit number;

(6) a list of the property disposed of under this section; and

(7) a statement that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(h) Not later than the 180th day after the date the well-site equipment or hydrocarbons are disposed of under this section, the commission shall publish a notice that states:

(1) the lease name;

(2) the well number;

(3) the county in which the well is located;

(4) the commission lease or gas well identification number or drilling permit number; and

(5) that equipment or hydrocarbons if applicable from the well and lease were disposed of under this section and that any person who has a legal or equitable ownership or security interest in the equipment or hydrocarbons that was in existence on the date the commission foreclosed its statutory lien may file a claim with the commission.

(i) The commission shall publish the notice required under Subsection (h) of this section in a newspaper of general circulation in the county in which the lease is located. A single notice may contain the information required for more than one well and lease. A notice given under this section following the plugging of a well may be combined with a notice given under Section 91.115 of this code following the cleanup of a site or facility.

Added by Acts 1985, 69th Leg., ch. 715, Sec. 1, eff. Aug. 26, 1985.
Amended by Acts 1989, 71st Leg., ch. 755, Sec. 1, eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 515, Sec. 4, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1233, Sec. 15, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.11, eff. September 28, 2011.

Sec. 89.086. CLAIMS AGAINST OIL AND GAS REGULATION AND CLEANUP FUND. (a) A person with a legal or equitable ownership or security interest in well-site equipment or hydrocarbons disposed of under Section 89.085 may make a claim against the oil and gas regulation and cleanup fund unless an element of the transaction giving rise to the interest occurs after the commission forecloses its statutory lien under Section 89.083.

(b) The commission shall adopt a form on which a person may file a sworn claim with the commission.

(c) A claimant must identify the well-site equipment or hydrocarbons in which the claimant has an interest and state the amount of the property interest as of the date the commission foreclosed its statutory lien under Section 89.083.

(d) The commission may require a person to include with a claim documentation that substantiates the claim or to disclose whether the claimant was an operator or nonoperator of the well.

(e) The commission may set a hearing to receive evidence on a claim filed under this section. The commission shall notify the claimant of the date, time, and place of a hearing.

(f) If the commission holds a hearing, the commission shall issue:

(1) a decision on the claim;

(2) a statement of findings of fact that includes the substance of the evidence heard; and

(3) the conclusions of law that support the decision.

(g) The commission shall consider the validity of claims in the order in which the claims are filed.

(h) The commission shall suspend an amount of money in the oil and gas regulation and cleanup fund equal to the amount of the claim until the claim is finally resolved. If the provisions of Subsection (k) prevent suspension of the full amount of the claim, the commission shall treat the claim as two consecutively filed claims, one in the amount of funds available for suspension and the other in the remaining amount of the claim.

(i) A claim made by or on behalf of the operator or a nonoperator of a well or a successor to the rights of the operator or nonoperator is subject to a ratable deduction from the proceeds or credit received for the well-site equipment to cover the costs incurred by the commission in removing the equipment or hydrocarbons from the well or in transporting, storing, or disposing of the equipment or hydrocarbons. A claim made by a person who is not an operator or nonoperator is subject to a ratable deduction for the costs incurred by the commission in removing the equipment from the well. If a claimant is a person who is responsible under law or commission rules for plugging the well or cleaning up pollution originating on the lease or if the claimant owes a penalty assessed by the commission or a court for a violation of a commission rule or order, the commission may recoup from or offset against a valid claim an expense incurred by the oil and gas regulation and cleanup fund that is not otherwise reimbursed or any penalties owed. An amount recouped from, deducted from, or offset against a claim under this subsection shall be treated as an invalid portion of the claim and shall remain suspended in the oil and gas regulation and cleanup fund

in the manner provided by Subsection (j).

(j) If the commission finds that a claim is valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and cleanup fund not later than the 30th day after the date of the commission's decision. If the commission finds that a claim is invalid in whole or in part, the commission shall continue to suspend in the oil and gas regulation and cleanup fund an amount equal to the invalid portion of the claim until the period during which the commission's decision may be appealed has expired or, if appealed, during the period the case is under judicial review. If on appeal the district court finds the claim valid in whole or in part, the commission shall pay the valid portion of the claim from the suspended amount in the oil and gas regulation and cleanup fund not later than 30 days after the date the court's judgment becomes unappealable. On the date the commission's decision is not subject to judicial review, the commission shall release from the suspended amount in the oil and gas regulation and cleanup fund the amount of the claim held to be invalid.

(k) If the aggregate of claims paid and money suspended that relates to well-site equipment or hydrocarbons from a particular well equals the total of the actual proceeds and credit realized from the disposition of that equipment or those hydrocarbons, the oil and gas regulation and cleanup fund is not liable for any subsequently filed claims that relate to the same equipment or hydrocarbons unless and until the commission releases from the suspended amount money derived from the disposition of that equipment or those hydrocarbons. If the commission releases money, then the commission shall suspend money in the amount of subsequently filed claims in the order of filing.

(l) A person who informs a potential claimant that the potential claimant may be entitled to file a claim under this section or who files a claim on behalf of a claimant may not contract for or receive from the claimant for services an amount greater than 10 percent of the paid claim.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 16, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.12, eff.

September 28, 2011.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.13, eff. September 28, 2011.

Sec. 89.087. JUDICIAL REVIEW OF COMMISSION DECISIONS; IMMUNITY FROM SUIT AND LIABILITY. (a) A claimant aggrieved by the commission's decision on a claim may appeal the decision in a district court of Travis County on or before the 60th day after the date the decision was issued. If the commission does not decide a claim by the 90th day after the date it was filed, the claimant may appeal within the 60-day period beginning on the 91st day after the date of filing.

(b) Judicial review under this section is by trial de novo.

(c) No interest accrues on a claim before an appeal is filed under this section.

(d) Except to the extent permitted by this chapter, and notwithstanding any other provision of law, the commission, its employees or agents, and the State of Texas are immune from suit and from liability based on the disposition of well-site equipment or hydrocarbons in accordance with this chapter.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

Sec. 89.088. RECORD OF REQUEST FOR NOTICE BY LIENHOLDER OR NONOPERATOR; FORM; FEE. (a) The commission shall maintain a record of a request for notice by a lienholder or nonoperator under Section 89.043(e) or 89.085(f) of this code for five years after the date on which the commission receives the request.

(b) The commission shall prepare a form for a request for notice. The commission shall require a person who requests notice to include on the form information that identifies the lease covered by the request.

(c) The commission may charge a filing fee for a request for notice not to exceed $10 for each lease covered by the request.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 5, eff. Jan. 1, 1994.

SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

Sec. 89.121. ENFORCEMENT BY COMMISSION. (a) In addition to the powers specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule or order of the commission adopted under this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code.

(b) Civil penalties collected for violations of this chapter or of rules relating to plugging that are adopted under this code shall be deposited in the general revenue fund.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 7, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.14, eff. September 28, 2011.

Sec. 89.122. APPEAL TO COURTS. Any person affected by the provisions of this chapter may sue to test the validity of any order adopted by the commission under this chapter in the same manner, on the same conditions, and to the same court or courts as prescribed for suits testing the validity of orders of the commission adopted under the general oil conservation statutes of this state.

Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 90. INTERSTATE COMPACT TO CONSERVE OIL AND GAS

Sec. 90.001. RATIFICATION. The Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, on February 16, 1935, by the Governor of Texas, the text of which is set out in Section 90.007 of this code, was ratified by the legislature of this state in Chapter 81, General Laws, Acts of the 44th Legislature, Regular Session, 1935.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.002. ORIGINAL COPY. The original copy of the compact is on deposit with the Department of State of the United States.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.003. REPRESENTATIVE. (a) The governor is the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Interstate Compact to Conserve Oil and Gas. He shall exercise and perform for the state all the powers and duties as a member of the Interstate Oil Compact Commission.

(b) The governor may appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of the commission.

(c) The representative shall take the oath of office prescribed by the constitution, which shall be filed with the Secretary of State.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.0031. ANNUAL REPORT. Before October 1 of each year, the office of the Interstate Oil Compact Commissioner for Texas shall prepare and file with the presiding officer of each house of the legislature a complete and detailed written report describing the activities of the office relating to this state's participation in the Interstate Compact to Conserve Oil and Gas and accounting for all funds received and disbursed by the office during the preceding fiscal year. The report must be included as a part of the annual financial report of the governor's office.

Added by Acts 1983, 68th Leg., p. 93, ch. 14, Sec. 1, eff. Aug. 29, 1983.

Sec. 90.004. EXTENSION. (a) The continuous extension of the Interstate Compact to Conserve Oil and Gas until September 1, 1951, by an agreement executed by the governor in the name of the State of Texas with other states currently members of the Interstate Oil

Compact Commission was authorized by the legislature, subject to the approval of Congress, in:

(1) Chapter 217, Acts of the 45th Legislature, Regular Session, 1937;

(2) Chapter 2, Special Laws, page 527, Acts of the 46th Legislature, Regular Session, 1939;

(3) Chapter 63, Acts of the 47th Legislature, Regular Session, 1941;

(4) Chapter 15, Acts of the 48th Legislature, Regular Session, 1943; and

(5) Chapter 52, Acts of the 50th Legislature, Regular Session, 1947.

(b) The governor may execute agreements in the name of the State of Texas for the further extension of the expiration date of the Interstate Compact to Conserve Oil and Gas.

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.005. FORM OF AGREEMENT. The agreement to extend the Interstate Compact to Conserve Oil and Gas, which the governor is authorized to execute for the state, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration (September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.006. WITHDRAWAL FROM COMPACT. (a) The governor may determine if and when it is in the best interest of the state to withdraw from the compact as provided by its terms on 60 days' notice.

(b) If the governor determines that the state should withdraw from the compact, he has full authority to give necessary notice and take any steps necessary and proper to effect the withdrawal of the State of Texas from the compact.

Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 90.007. TEXT OF COMPACT. The Interstate Compact to Conserve Oil and Gas reads as follows:

"AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

"ARTICLE I

"This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

"ARTICLE II

"The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

"ARTICLE III

"Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

"(a) The operation of any oil well with an inefficient gas-oil ratio;

"(b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;

"(c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;

"(d) The creation of unnecessary fire hazards;

"(e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;

"(f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

"The enumeration of the foregoing subjects shall not limit the

scope of the authority of any state.

"ARTICLE IV

"Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

"ARTICLE V

"It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

"ARTICLE VI

"Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

"The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

"No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-

year to the daily average production of the compacting states during said period.

"ARTICLE VII

"No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

"ARTICLE VIII

"This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

"The representatives of the signatory states have signed this agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

"This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified."

Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 91.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Gas" means natural gas.

(3) "Oil" means crude oil and crude petroleum oil.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.002. CRIMINAL PENALTY. (a) A person who wilfully or with criminal negligence violates Section 91.101 of this code or a rule, order, or permit of the commission issued under that section commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a

violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1983, 68th Leg., p. 5262, ch. 967, Sec. 9, eff. Sept. 1, 1983. Renumbered from Sec. 91.351 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(32), eff. Sept. 1, 1987.

Sec. 91.003. ADDITIONAL ENFORCEMENT AUTHORITY. (a) In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the manner and subject to the conditions provided in Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief as provided by those chapters.

(b) If the enforcement authority in Section 81.054, Natural Resources Code, is used to institute a civil action alleging a violation of an NPDES permit issued under this chapter, the attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Added by Acts 1983, 68th Leg., p. 5262, ch. 967, Sec. 9, eff. Sept. 1, 1983. Renumbered from Sec. 91.352 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(32), eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 6, eff. Aug. 28, 1995.

SUBCHAPTER B. DUTIES RELATING TO OIL AND GAS WELLS

Sec. 91.011. CASING. (a) Before drilling into the oil or gas bearing rock, the owner or operator of a well being drilled for oil or gas shall encase the well with good and sufficient wrought iron or steel casing or with any other material that meets standards adopted by the commission, particularly where wells could be subjected to corrosive elements or high pressures and temperatures, in a manner and to a depth that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and if the well is drilled through the first into the lower oil or gas bearing rock, the well shall be cased in a manner and to a depth that will exclude fresh water above the last oil or gas bearing rock

penetrated.

(b) The commission shall adopt rules regarding the depth of well casings necessary to meet the requirements of this section.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 704, Sec. 1, eff. Aug. 26, 1985.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.01, eff. September 1, 2011.

Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The commission shall issue, on request from an applicant for a permit for a well to be drilled into oil or gas bearing rock, a letter of determination stating the total depth of surface casing required for the well by Section 91.011.

(b) The commission may charge a fee in an amount to be determined by the commission for a letter of determination.

(c) The commission shall charge a fee not to exceed $75, in addition to the fee required by Subsection (b), for processing a request to expedite a letter of determination.

(d) The fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.02, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 835 (H.B. 7), Sec. 13, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1075 (H.B. 3309), Sec. 3, eff. September 1, 2013.

Sec. 91.012. WATER IN WELLS. (a) In boring any well for oil or gas, if a person pierces any cap rock or other geological formation in a manner that will cause a flow of salt water or fresh water injurious to an already bored oil well or any oil or gas deposits and that will probably result in the injury of the oil or gas field or already bored oil or gas well, the person shall abandon immediately all work on the well if the flow of water cannot be cased

off and shall plug and fill the well in a manner and with materials that will stop the flow of the water.

(b) No well owner or person boring a well described under Subsection (a) of this section may remove the casing from the drilled well until the flow of water is stopped either by casing off or plugging the well.

(c) The provisions of this section apply only if the cap rock or other formation is pierced at a depth below the horizon at which oil or gas has been discovered already.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.013. PLUGGING AND SHUTTING IN WELLS BY OTHERS. (a) If the owner of a well described in Subsection (a) of Section 91.012 of this code neglects or refuses to have the well plugged or shut in for more than 20 days after written notice is given to him, the owner or operator of adjacent or neighboring land may enter the premises on which the well is located and have the well plugged if it is an abandoned well or shut in if it is not abandoned, in the manner provided by law.

(b) Notice may be given to the owner of the well either by personal service on the owner or by posting the notice at a conspicuous place at or near the well.

(c) The reasonable cost and expense incurred in plugging or shutting in the well shall be paid by the owner of the well and may be recovered as debts of like amount are recovered under the law.

Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.014. PETITION TO RESTRAIN WASTE. (a) In addition to any other penalties, a district judge, in term time or vacation time, shall hear and determine any petition that is filed to restrain the waste of gas in violation of this subchapter and may issue mandatory or restraining orders that in his judgment are necessary.

(b) The petition may be filed by any citizen of this state and does not have to allege further financial interest of the petitioner in the state's natural resources than that possessed in common with

all citizens of the state.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.015. PREVENTION OF WASTE. Operators, contractors, drillers, pipeline companies, and gas distributing companies that drill for or produce oil or gas or pipe oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil, gas, or both oil and gas in drilling and producing operations, storage, piping, and distribution and shall not wastefully use oil or gas or allow oil or gas to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.016. CONFINING GAS TO ORIGINAL STRATUM. (a) If gas located in a gas-bearing stratum known to contain gas in paying quantities is encountered in a well drilled for oil or gas in this state, the gas shall be confined to its original stratum until it can be produced and used without waste.

(b) Gas-bearing strata shall be adequately protected from infiltrating water.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.017. USING GAS IN THE OPEN AIR. (a) Any person who uses gas in lights in the open air or in or around derricks shall turn off the gas not later than 8 a. m. of each day the lights are burning or are used and shall not turn the lights on or relight them between 8 a. m. and 5 p. m.

(b) The person consuming the gas and using the burners in the open air shall enclose them in glass globes or lamps.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 91.018. ILLUMINATION. No person, copartnership, or corporation may use gas for illuminating purposes in flambeau lights. The use of "jumbo" burners or other burners consuming no more gas than the "jumbo" burners is not prohibited.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.019. STANDARDS FOR CONSTRUCTION, OPERATION, AND MAINTENANCE OF ELECTRICAL POWER LINES. An operator shall construct, operate, and maintain an electrical power line serving a well site or other surface facility employed in operations incident to oil and gas development and production in accordance with the National Electrical Code published by the National Fire Protection Association and adopted by the Texas Commission of Licensing and Regulation under Chapter 1305, Occupations Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 442 (H.B. 2259), Sec. 3, eff. September 1, 2009.

Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission shall work cooperatively with other appropriate state agencies to study and evaluate electronic access to geologic data and surface casing depths necessary to protect usable groundwater in this state.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.03, eff. September 1, 2011.

SUBCHAPTER C. STANDARD GAS MEASUREMENT

Sec. 91.051. TITLE. This subchapter may be cited as the Standard Gas Measurement Law.

Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.052. DEFINITION. (a) The term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

(b) The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. If the conditions of pressure and temperature differ from this standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.053. COMMISSION DETERMINATION. The commission shall determine the average temperature of gas as produced in each oil and gas field in Texas, other variable factors necessary to calculate the metered volumes in accordance with the ideal gas laws, and the variable factors to correct for deviation from the ideal gas laws in each of the oil and gas fields in the state.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.054. NOTICE AND HEARING. On request of any interested person, the commission shall give proper notice and hold a public hearing before making a determination under Section 91.053 of this code.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.055. FINDINGS AND RULES. On making the determination, the commission promptly shall make its findings and shall adopt reasonable field rules that may be necessary to effectuate the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 91.056. USE OF FINDINGS AND FIELD RULES. (a) Any person may use the findings and field rules of the commission for any purposes under this subchapter.

(b) If the findings or field rules are not used as provided in Subsection (a) of this section in determining volumes under this subchapter, the volumes otherwise determined shall be corrected to the basis of the standard cubic foot of gas as defined in Section 91.052 of this code.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.057. METHOD OF REPORTING. A person required to report volumes of gas under the laws of this state shall report the volumes in number of standard cubic feet calculated and determined under the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.058. SALE, PURCHASE, DELIVERY, AND RECEIPT OF GAS. (a) Each sale, purchase, delivery, and receipt of gas by volume made in this state by, for, or on behalf of an oil and gas lease owner, royalty owner under a lease, or other mineral interest owner shall be made and the gas shall be measured, calculated, purchased, delivered, and accounted for on the basis of a standard cubic foot of gas as defined in this subchapter and determined under this subchapter.

(b) If the provisions of this subchapter operate to change the basis of measurement provided in existing contracts, the price for gas, including royalty gas, provided for in the contracts shall be adjusted to compensate for the change in the method of measuring the volume of gas delivered under the contracts if either the purchaser or seller so desires.

(c) This section is intended to protect parties to contracts in existence on October 4, 1949, so that the total amount of money paid for a volume of gas purchased or required to be accounted for under

these contracts shall remain unaffected by this subchapter.

Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.059. CONSTITUTIONALITY. If the provisions of Section 91.058 of this code or any part of that section are held to be invalid or unconstitutional by the courts, the remaining portions of this subchapter shall become ineffective and inoperative.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.061. CIVIL SUIT. None of these provisions shall prevent an aggrieved person from maintaining a civil suit for damages in the county or counties in which the gas is produced.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.062. APPLICABILITY OF CERTAIN PROVISIONS. None of the provisions of Sections 91.058 through 91.061 of this code affect or apply to purchases or sales made on any basis other than a volume basis.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. PREVENTION OF POLLUTION

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.101. RULES AND ORDERS.

(a) To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells

or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this subsection.

(b) Notwithstanding the provisions of Subsection (a) of this section, the authority granted to the commission by this section does not include the authority to adopt and enforce rules and orders or issue permits regarding the collection, storage, handling, transportation, processing, or disposal of waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act,

as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Sec. 91.101. RULES AND ORDERS.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

To prevent pollution of surface water or subsurface water in the state, the commission shall adopt and enforce rules and orders and may issue permits relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas, including:

(A) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(B) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(C) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(D) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(E) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(F) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(3) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission; and

(4) the discharge, storage, handling, transportation, reclamation, or disposal of oil and gas waste as defined in Section 91.1011 of this subchapter, or of any other substance or material associated with any operation or activity regulated by the commission under Subdivisions (1), (2), and (3) of this section.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Text of section effective until delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE.

(a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in

any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material, but does not include waste arising out of or incidental to activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as amended.

Added by Acts 1983, 68th Leg., p. 5060, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Text of section effective upon delegation of RCRA authority to Railroad Commission of Texas

Sec. 91.1011. OIL AND GAS WASTE.

(a) In this subchapter, "oil and gas waste" means waste that arises out of or incidental to the drilling for or producing of oil or gas, including waste arising out of or incidental to:

(1) activities associated with the drilling of injection water source wells which penetrate the base of useable quality water;

(2) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission;

(3) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(4) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in Section 91.173, Natural Resources Code;

(5) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in Section 91.201, Natural Resources Code; and

(6) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel.

(b) "Oil and gas waste" includes salt water, brine, sludge, drilling mud, and other liquid, semiliquid, or solid waste material.

Added by Acts 1983, 68th Leg., p. 5060, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 921, Sec. 4, eff. June 15, 1985.

Sec. 91.1012. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the quality of water in the state, to inspect and investigate conditions relating to development of rules, orders, or permits issuable under Section 91.101 of this code, to monitor compliance with a rule, permit, or other order of the commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1983, 68th Leg., p 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983.

Sec. 91.1013. APPLICATION FEES. (a) With each application for a fluid injection well permit, the applicant shall submit to the commission a nonrefundable fee of $200. In this section, "fluid injection well" means any well used to inject fluid or gas into the ground in connection with the exploration or production of oil or gas other than an oil and gas waste disposal well regulated by the commission pursuant to Chapter 27, Water Code.

(b) With each application for a permit to discharge to surface water under this chapter and commission rules, other than a permit for a discharge that meets National Pollutant Discharge Elimination System requirements for agricultural or wildlife use, the applicant shall submit to the commission a nonrefundable fee of $300.

(c) Fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1985, 69th Leg., ch. 239, Sec. 72, eff. Sept. 1, 1985. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 14, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1089, Sec. 3, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 17, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.15, eff. September 28, 2011.

Sec. 91.1015. GROUNDWATER PROTECTION REQUIREMENTS. The commission shall adopt rules to establish groundwater protection requirements for operations that are within the jurisdiction of the commission, including requirements relating to the depth of surface casing for wells.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1021 (H.B. 2694), Sec. 2.04, eff. September 1, 2011.

Sec. 91.102. ADDITIONAL PERSONNEL. The commission is directed to employ additional personnel necessary to administer this subchapter and related laws and rules and orders adopted by the commission.

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983.

Sec. 91.103. PERSONS REQUIRED TO EXECUTE BOND, LETTER OF CREDIT, OR CASH DEPOSIT.
Any person, including any firm, partnership, joint stock association, corporation, or other organization, required to file an organization report under Section 91. 142 of this code shall execute and file with the commission a bond, letter of credit, or cash deposit.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 8, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 18, eff. Sept. 1, 2004.

Sec. 91.104. BONDS, LETTERS OF CREDIT, CASH DEPOSITS, AND WELL-SPECIFIC PLUGGING INSURANCE POLICIES. (a) The commission shall require a bond, letter of credit, or cash deposit to be filed with the commission as provided by Subsection (b).

(b) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is an inactive operator or who operates one or more wells must, at the time of filing or renewing an organization report required by Section 91.142, file:

(1) an individual bond as provided under Section 91.1041;

(2) a blanket bond as provided under Section 91.1042; or

(3) a letter of credit or cash deposit in the same amount as required for an individual bond under Section 91.1041 or a blanket bond under Section 91.1042.

(c) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells is considered to have met that requirement for a well if the well bore is included in a well-specific plugging insurance policy that:

(1) is approved by the Texas Department of Insurance;

(2) names this state as the owner and contingent beneficiary of the policy;

(3) names a primary beneficiary who agrees to plug the specified well bore;

(4) is fully prepaid and cannot be canceled or surrendered;

(5) provides that the policy continues in effect until the specified well bore has been plugged;

(6) provides that benefits will be paid when, but not before, the specified well bore has been plugged in accordance with commission rules in effect at the time of plugging; and

(7) provides benefits that equal the greatest of:

(A) an amount equal to $2 for each foot of well depth, as determined in the manner specified by the commission, for the specified well;

(B) if the specified well is a bay well and regardless

of whether the well is producing oil or gas, the amount required under commission rules for a bay well that is not producing oil or gas;

(C) if the specified well is an offshore well and regardless of whether the well is producing oil or gas, the amount required under commission rules for an offshore well that is not producing oil or gas; or

(D) the payment otherwise due under the policy for plugging the well bore.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 603, Sec. 9, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 30, Sec. 1, eff. Aug. 30, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 19, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 20, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 490, Sec. 1, eff. Sept. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 1, eff. June 17, 2005.

Sec. 91.1041. INDIVIDUAL BOND.

(a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 who operates one or more wells may file a bond in an amount equal to $2 for each foot of well depth for each well.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of one or more bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a).

(c) When calculating under Subsection (a) the amount of the bond a person who operates one or more wells is required to file, the commission shall exclude a well if the well bore is included in a well-specific plugging insurance policy described by Section 91.104(c).

(d) If the inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy described by Section 91.104(c) in the calculation under Subsection (b) of the amount of the bond an operator of one or more bay or offshore wells

is required to file would result in an increase in the amount of the bond that would otherwise be required, the rules must provide for the exclusion of the well from the calculation.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 10, eff. Sept. 1, 1991. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 21, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 22, eff. Sept. 1, 2004. Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 2, eff. June 17, 2005.

Sec. 91.1042. BLANKET BOND.

(a) A person required to file a bond, letter of credit, or cash deposit under Section 91.103 may file a blanket bond to cover all wells for which a bond, letter of credit, or cash deposit is required as follows:

(1) a person who operates 10 or fewer wells shall file a $25,000 blanket bond;

(2) a person who operates more than 10 but fewer than 100 wells shall file a $50,000 blanket bond; and

(3) a person who operates 100 or more wells shall file a $250,000 blanket bond.

(b) Notwithstanding Subsection (a), the commission by rule shall set the amount of the bond for an operator of bay or offshore wells at a reasonable amount that exceeds the amount provided by Subsection (a)(1), (2), or (3), as applicable.

(c) When calculating the number of an operator's wells for purposes of Subsection (a), the commission shall exclude a well if the well bore is included in a well-specific plugging insurance policy described by Section 91.104(c).

(d) If the inclusion of a bay or offshore well whose well bore is included in a well-specific plugging insurance policy described by Section 91.104(c) in the calculation under Subsection (b) of the amount of the bond an operator of bay or offshore wells is required to file would result in an increase in the amount of the bond that would otherwise be required, the rules must provide for the exclusion of the well from the calculation.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 10, eff. Sept. 1, 1991.

Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 23, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 24, eff. Sept. 1, 2004.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 3, eff. June 17, 2005.

Sec. 91.105. BOND CONDITIONS. Each bond required by Section 91.103 shall be conditioned that the operator will plug and abandon all wells and control, abate, and clean up pollution associated with an operator's oil and gas activities covered under the bond in accordance with the law of the state and the permits, rules, and orders of the commission. This section does not apply to a well-specific plugging insurance policy described by Section 91.104(c).

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.106 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 11, eff. Sept. 1, 1991.
Amended by:
Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 4, eff. June 17, 2005.

Sec. 91.106. EXECUTION OF BOND. Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and be continued in effect until the conditions have been met or release is authorized by the commission.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.107 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983.

Sec. 91.107. NEW BOND, LETTER OF CREDIT, OR CASH DEPOSIT. If an active or inactive well is transferred, sold, or assigned by its operator, the commission shall require the party acquiring the well to file a new bond, letter of credit, or cash deposit as provided by Section 91.104(b), and the financial security of the prior operator shall continue to be required and to remain in effect, and the commission may not approve the transfer of operatorship, until the

new bond, letter of credit, or cash deposit is provided or the commission determines that the bond, letter of credit, or cash deposit previously submitted to the commission by the person acquiring the well complies with this subchapter. A transfer of a well from one entity to another entity under common ownership is a transfer for purposes of this section. This section does not apply to a well bore that is included in a well-specific plugging insurance policy described by Section 91.104(c).

Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 91.108 by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 12, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 25, 26, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 27, eff. Sept. 1, 2004.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.

Sec. 91.108. DEPOSIT AND USE OF FUNDS. Subject to the refund provisions of Section 91.1091, if applicable, proceeds from bonds and other financial security required pursuant to this chapter and benefits under well-specific plugging insurance policies described by Section 91.104(c) that are paid to the state as contingent beneficiary of the policies shall be deposited in the oil and gas regulation and cleanup fund and, notwithstanding Sections 81.068 and 91.113, may be used only for actual well plugging and surface remediation.

Added by Acts 1983, 68th Leg., p. 5258, ch. 967, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 15, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 28, eff. Sept. 1, 2001.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.16, eff. September 28, 2011.

Sec. 91.109. FINANCIAL SECURITY FOR PERSONS INVOLVED IN ACTIVITIES OTHER THAN OPERATION OF WELLS. (a) A person applying for or acting under a commission permit to store, handle, treat, reclaim, or dispose of oil and gas waste may be required by the commission to maintain a performance bond or other form of financial security conditioned that the permittee will operate and close the storage, handling, treatment, reclamation, or disposal site in accordance with state law, commission rules, and the permit to operate the site. However, this section does not authorize the commission to require a bond or other form of financial security for saltwater disposal pits, emergency saltwater storage pits (including blow-down pits), collecting pits, or skimming pits provided that such pits are used in conjunction with the operation of an individual oil or gas lease. Subject to the refund provisions of Section 91.1091, proceeds from any bond or other form of financial security required by this section shall be placed in the oil and gas regulation and cleanup fund. Each bond or other form of financial security shall be renewed and continued in effect until the conditions have been met or release is authorized by the commission.

(b) In addition to the financial security requirements of Subsection (a), a person required to file a bond, letter of credit, or cash deposit under Section 91.103 who is involved in activities other than the ownership or operation of wells must file the bond, letter of credit, or cash deposit at the time of filing or renewing an organization report required by Section 91.142 according to the following schedule:

(1) no bond, letter of credit, or cash deposit if the person is a:

(A) local distribution company;

(B) gas marketer;

(C) crude oil nominator;

(D) first purchaser;

(E) well servicing company;

(F) survey company;

(G) salt water hauler;

(H) gas nominator;

(I) gas purchaser; or

(J) well plugger; or

(2) a bond, letter of credit, or cash deposit in an amount not to exceed $25,000 if the person is involved in an activity that

is not associated with the ownership or operation of wells and is not listed in Subdivision (1).

(c) A person who engages in more than one activity or operation, including well operation, for which a bond, letter of credit, or cash deposit is required under this subchapter is not required to file a separate bond, letter of credit, or cash deposit for each activity or operation in which the person is engaged. The person is required to file a bond, letter of credit, or cash deposit only in the amount required for the activity or operation in which the person engages for which a bond, letter of credit, or cash deposit in the greatest amount is required. The bond, letter of credit, or cash deposit filed covers all of the activities and operations for which a bond, letter of credit, or cash deposit is required under this subchapter.

Added by Acts 1985, 69th Leg., ch. 464, Sec. 1, eff. Aug. 26, 1985. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 17, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 29, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 490, Sec. 3, eff. Sept. 1, 2003.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.17, eff. September 28, 2011.

Sec. 91.1091. REFUND. The commission shall refund the proceeds from a bond, letter of credit, or cash deposit required under this subchapter if:

(1) the conditions that caused the proceeds to be collected are corrected;

(2) all administrative, civil, and criminal penalties relating to those conditions are paid; and

(3) the commission has been reimbursed for all costs and expenses incurred by the commission in relation to those conditions.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 16, eff. Sept. 1, 1991. Amended by Acts 1999, 76th Leg., ch. 30, Sec. 2, eff. Aug. 30, 1999.
Amended by:

Acts 2005, 79th Leg., Ch. 489 (H.B. 380), Sec. 5, eff. June 17, 2005.

Sec. 91.110. OIL AND GAS WASTE REDUCTION AND MINIMIZATION. To encourage the reduction and minimization of oil and gas waste, the commission shall implement a program to:

(1) provide operators with training and technical assistance on oil and gas waste reduction and minimization;

(2) assist operators in developing oil and gas waste reduction and minimization plans; and

(3) by rule establish incentives for oil and gas waste reduction and minimization.

Added by Acts 1991, 72nd Leg., ch. 296, Sec. 2.06, eff. June 7, 1991; Acts 1991, 72nd Leg., ch. 590, Sec. 6, eff. June 16, 1991.

Sec. 91.113. INVESTIGATION, ASSESSMENT, OR CLEANUP BY COMMISSION. (a) If oil and gas wastes or other substances or materials regulated by the commission under Section 91.101 are causing or are likely to cause the pollution of surface or subsurface water, the commission, through its employees or agents, may use money in the oil and gas regulation and cleanup fund to conduct a site investigation or environmental assessment or control or clean up the oil and gas wastes or other substances or materials if:

(1) the responsible person has failed or refused to control or clean up the oil and gas wastes or other substances or materials after notice and opportunity for hearing;

(2) the responsible person is unknown, cannot be found, or has no assets with which to control or clean up the oil and gas wastes or other substances or materials; or

(3) the oil and gas wastes or other substances or materials are causing the pollution of surface or subsurface water.

(b) For purposes of this section, "responsible person" means any operator or other person required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(c) The commission or its employees or agents, on proper identification, may enter the land of another for the purpose of conducting a site investigation or environmental assessment or controlling or cleaning up oil and gas wastes or other substances or materials under this section.

(d) The conducting of a site investigation or environmental

assessment or the control or cleanup of oil and gas wastes or other substances or materials by the commission under this section does not prevent the commission from seeking penalties or other relief provided by law from any person who is required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials.

(e) The commission and its employees are not liable for any damages arising from an act or omission if the act or omission is part of a good-faith effort to carry out this section.

(f) If the commission conducts a site investigation or environmental assessment or controls or cleans up oil and gas wastes or other substances or materials under this section, the commission may recover all costs incurred by the commission from any person who was required by law, rules adopted by the commission, or a valid order of the commission to control or clean up the oil and gas wastes or other substances or materials. The commission by order may require the person to reimburse the commission for those costs or may request the attorney general to file suit against the person to recover those costs. At the request of the commission, the attorney general may file suit to enforce an order issued by the commission under this subsection. A suit under this subsection may be filed in any court of competent jurisdiction in Travis County. Costs recovered under this subsection shall be deposited to the oil and gas regulation and cleanup fund.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 1, eff. Sept. 1, 1991.
Amended by Acts 1997, 75th Leg., ch. 120, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 57, Sec. 3, eff. May 10, 1999.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.18, eff. September 28, 2011.

Sec. 91.1131. RISK ASSESSMENT STANDARDS. (a) The commission by rule may establish risk assessment as the guide for:

(1) conducting site investigations and environmental assessments; and

(2) controlling and cleaning up oil and gas wastes and other substances and materials.

(b) Rules adopted under this section must provide for:

(1) determining whether an actual or potential risk exists at a site;

(2) screening contaminants at the site to identify those that pose a risk;

(3) developing cleanup standards based on contamination levels that are protective of human health and the environment; and

(4) establishing a reporting mechanism for informing the commission regarding specific remediation activities.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 32, eff. Sept. 1, 2001.

Sec. 91.1132. PRIORITIZATION OF HIGH-RISK WELLS. The commission by rule shall develop a system for:

(1) identifying abandoned wells that pose a high risk of contaminating surface water or groundwater;

(2) periodically testing high-risk wells by conducting a fluid level test or, if necessary, a pressure test; and

(3) giving priority to plugging high-risk wells with compromised casings.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 32, eff. Sept. 1, 2001.

Sec. 91.114. ACCEPTANCE OF ORGANIZATION REPORT OR APPLICATION FOR PERMIT; APPROVAL OF CERTIFICATE OF COMPLIANCE; REVOCATION. (a) Except as provided by Subsection (d), the commission may not accept an organization report required under Section 91.142 or an application for a permit under this Chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code, or approve a certificate of compliance under Section 91.701 if:

(1) the organization that submitted the report, application, or certificate violated a statute or commission rule, order, license, certificate, or permit that relates to safety or the prevention or control of pollution; or

(2) a person who holds a position of ownership or control in the organization has, within the seven years preceding the date on which the report, application, or certificate is filed, held a position of ownership or control in another organization and during that period of ownership or control the other organization violated a statute or commission rule, order, license, permit, or certificate

that relates to safety or the prevention or control of pollution.

(b) An organization has committed a violation if:

(1) a final judgment or final administrative order finding the violation has been entered against the organization and all appeals have been exhausted; or

(2) the commission and the organization have entered into an agreed order relating to the alleged violation.

(c) Regardless of whether the person's name appears or is required to appear on the organization report required by Section 91.142, a person holds a position of ownership or control in an organization if:

(1) the person is:

(A) an officer or director of the organization;

(B) a general partner of the organization;

(C) the owner of a sole proprietorship organization;

(D) the owner of at least 25 percent of the beneficial interest in the organization; or

(E) a trustee of the organization; or

(2) the person has been determined by a final judgment or final administrative order to have exerted actual control over the organization.

(d) The commission shall accept the report or application or approve the certificate if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the organization have agreed;

(2) all administrative, civil, and criminal penalties and all cleanup and plugging costs incurred by the state relating to those conditions are paid or are being paid in accordance with a payment schedule to which the commission and the organization have agreed; and

(3) the report, application, or certificate is in compliance with all other requirements of law and commission rules.

(e) If a report or application is rejected or a certificate is disapproved under this section, the commission shall provide the organization with a written statement explaining the reason for the rejection or disapproval.

(f) Notwithstanding Subsection (a), the commission may issue a permit to an organization described by Subsection (a) for a term specified by the commission if the permit is necessary to remedy a

violation of law or commission rules.

(g) A fee tendered in connection with a report or application that is rejected under this section is nonrefundable.

(h) If the commission is prohibited by Subsection (a) from accepting an organization's organization report or application or approving the organization's certificate or would be prohibited from doing so by that subsection if the organization submitted a report, application, or certificate, the commission, after notice and opportunity for a hearing, by order may revoke:

(1) the organization's organization report filed under Section 91.142;

(2) a permit issued to the organization under this chapter, Chapter 85, or Chapter 26, 27, or 29, Water Code; or

(3) any certificate of compliance approved under Section 91.701.

(i) An order under Subsection (h) shall provide the organization a reasonable period of time to comply with the judgment or order finding the violation before the revocation takes effect.

(j) On revocation of its organization report, an organization may not perform any activities under the jurisdiction of the commission under this title or Chapter 26, 27, or 29, Water Code, except as necessary to remedy a violation of law or commission rules and as authorized by the commission.

(k) The commission may not revoke an organization's organization report, permit, or certificate of compliance under Subsection (h) if it finds that the organization has fulfilled the conditions set out in Subsection (d).

(l) In determining whether or not to revoke an organization's organization report, permit, or certificate of compliance under Subsection (h), the commission shall consider the organization's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the organization.

(m) Revocation of an organization's organization report, permit, or certificate does not relieve the organization of any existing or future duty under law, rules, or permit conditions to:

(1) protect surface or subsurface water from pollution;

(2) properly dispose of oil and gas waste; or

(3) clean up unpermitted discharges of oil and gas waste.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 13, eff. Sept. 1, 1991. Renumbered from Sec. 91.110 by Acts 1993, 73rd Leg., ch. 107, Sec. 10.01(10), eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 617, Sec. 1, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 121, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 30, Sec. 3, eff. Aug. 30, 1999; Acts 2003, 78th Leg., ch. 956, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 5, eff. September 1, 2007.

Sec. 91.115. FIRST LIEN ON EQUIPMENT AND STORED HYDROCARBONS. (a) If a responsible person fails to clean up a site or facility that has ceased oil and gas operations under the commission's jurisdiction on or before the date the site or facility is required to be cleaned up by law or by a rule adopted or order issued by the commission, the state has a first lien, superior to all preexisting and subsequent liens and security interests, on the responsible person's interest in any hydrocarbons stored at the site or facility and in any equipment that is:

(1) located at the site or facility; and

(2) used by the responsible person in connection with the activity that generated the pollution.

(b) The lien is in the amount of the total costs of cleaning up the oil and gas wastes or other substances from the site or facility and arises on the date the site or facility is required by law or by a rule or order of the commission to be cleaned up.

(c) The commission may foreclose on the lien by entering into a contract to clean up the site or facility. The commission is not required to give notice or an opportunity for a hearing to subordinate lienholders before entering into a contract to clean up the site or facility.

(d) The lien is extinguished if the site or facility is cleaned up in accordance with commission rules by any person before the commission enters into a contract to clean up the site or facility.

(e) The lien is extinguished as to any stored hydrocarbons or items of equipment that are lawfully removed by any person other than the operator or a nonoperator according to a lien, lease, judgment, written contract, or security agreement before the commission enters

into a cleanup contract. An item of equipment may not be removed from an abandoned site or facility if the removal will cause the release of a substance that may cause pollution unless the substance is lawfully disposed of.

(f) Equipment or stored hydrocarbons subject to a lien under this section are presumed to have been abandoned on the date the commission enters into a contract to clean up the site or facility on which the equipment or hydrocarbons are located. The commission may dispose of the equipment or stored hydrocarbons in accordance with the provisions of Sections 89.085, 89.086, and 89.087 of this code for the disposition of well-site equipment and hydrocarbons.

(g) In this section "responsible person" has the meaning assigned by Section 91.113 of this code.

(h) The lien provided by this section, as it relates to stored hydrocarbons, shall be subject to and inferior to any lien in favor of the State of Texas to secure royalty payments.

Added by Acts 1993, 73rd Leg., ch. 515, Sec. 7, eff. Jan. 1, 1994. Amended by Acts 2003, 78th Leg., ch. 1121, Sec. 1, 2, eff. Sept. 1, 2003.

Sec. 91.116. NOTICE OF COMMERCIAL SURFACE DISPOSAL FACILITY PERMIT APPLICATION. (a) In this section, "commercial surface disposal facility" means a facility whose primary business purpose is to provide, for compensation, surface disposal of oil field fluids or oil and gas wastes, including land application for treatment and disposal.

(b) A person who files an application for a permit for a commercial surface disposal facility shall publish notice of the application in accordance with this section.

(c) The notice must include:

(1) the date the application was filed;

(2) a description of the location of the site for which the application was made, including the county in which the site is located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(3) the name of the owner of the site;

(4) the name of the applicant;

(5) the type of fluid or waste to be disposed of at the

facility;

(6) the disposal method proposed; and

(7) the procedure for protesting the application.

(d) The notice must be published:

(1) at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed and not later than the 30th day after the date on which the application is filed; and

(2) in a newspaper of general circulation in the county in which the proposed disposal would occur.

Added by Acts 1999, 76th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1999.

Sec. 91.117. PUBLIC INFORMATION HEARING ON APPLICATION FOR COMMERCIAL SURFACE DISPOSAL FACILITY PERMIT. (a) In this section, "commercial surface disposal facility" has the meaning assigned by Section 91.116.

(b) The commission may hold a public meeting to receive public comment on an application for a commercial surface disposal facility if the commission determines a public meeting is in the public interest.

(c) The meeting must be held in the county in which the proposed facility would be located.

Added by Acts 1999, 76th Leg., ch. 668, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER E. BOOKS, RECORDS, AND REPORTS

Sec. 91.141. BOOKS AND RECORDS. (a) Owners and operators of oil and gas wells shall keep books that show accurately:

(1) the amount of sold and unsold stock;

(2) the amount of promotion money paid;

(3) the amount of oil and gas produced and disposed of and the price for which the oil and gas was sold;

(4) the receipts from the sale or transfer of leases or other property; and

(5) disbursements made in connection with or for the benefit of the business.

(b) The books shall be kept open for the inspection of the commission or any accredited representative of the commission and any

stockholder or shareholder or royalty owner in the business.

(c) The owners and operators of oil and gas wells shall report the information to the commission for its information if required by the commission to do so.

Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 91.142. REPORT TO COMMISSION. (a) A person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of performing operations which are within the jurisdiction of the commission shall file immediately with the commission:

(1) the name of the company or organization;

(2) the post-office address of the company or organization;

(3) the plan under which the company or organization was organized;

(4) the names and post-office addresses of the trustee or trustees of the company or organization;

(5) the names, unique identifying numbers such as driver's license numbers, and post-office addresses of the officers and directors; and

(6) if required by Subsection (b) of this section, the name and address of the resident agent.

(b) Any foreign or nonresident entity listed in Subsection (a) of this section shall maintain or designate a resident agent upon whom any process, notice, or demand required or permitted by law to be served upon such entity may be served.

(c) If any such entity required by the terms of this section to maintain or designate such agent shall fail to do so, then and in such event, the organization report required to be filed with the commission is not valid.

(d) Failure by any such entity listed in Subsection (a) of this section to answer such process or demand shall render the organization report invalid.

(e) The commission shall require an entity described by Subsection (a) of this section to refile an organization report annually according to a schedule established by the commission.

(f) If an entity described by Subsection (a) does not maintain on file with the commission an organization report and financial security as required by this chapter:

(1) the entity may not perform operations under the jurisdiction of the commission except as necessary to remedy a violation of law or commission rules and as authorized by the commission; and

(2) the commission, on written notice, may suspend:

(A) any permits held by the entity; or

(B) any certificates of compliance approved under Subchapter P.

(g) An organization report filed under this section must be accompanied by the following fee:

(1) for an operator of not more than 25 wells, $300;

(2) for an operator of more than 25 but not more than 100 wells, $500;

(3) for an operator of more than 100 wells, $1,000;

(4) for an operator of one or more natural gas pipelines as classified by the commission, $225;

(5) for an operator of one or more service activities or facilities who does not operate any wells, an amount determined by the commission but not less than $300 or more than $500;

(6) for an operator of one or more liquids pipelines as classified by the commission who does not operate any wells, an amount determined by the commission but not less than $425 or more than $625;

(7) for an operator of one or more service activities or facilities, including liquids pipelines as classified by the commission, who also operates one or more wells, an amount determined by the commission based on the sum of the amounts provided by the applicable subdivisions of this subsection but not less than $425 or more than $1,125; and

(8) for an entity not currently performing operations under the jurisdiction of the commission, $300.

(h) To enable the commission to better protect the state's resources, an entity described by Subsection (a) or an affiliate of such an entity performing operations within the jurisdiction of the commission that files for federal bankruptcy protection shall give written notice to the commission of that action by submitting the notice to the office of general counsel not later than the 30th day

after the date of filing.

Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 398, Sec. 1, eff. Aug. 26, 1985; Acts 1997, 75th Leg., ch. 121, Sec. 2, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 33, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 490, Sec. 4, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 626, Sec. 1, eff. Sept. 1, 2003.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 6, eff. September 1, 2007.

Sec. 91.143. FALSE APPLICATIONS, REPORTS, AND DOCUMENTS AND TAMPERING WITH GAUGES. (a) A person may not:

(1) make or subscribe any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;

(2) aid or assist in, or procure, counsel, or advise the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;

(3) knowingly simulate or falsely or fraudulently execute or sign such an application, report, or other document;

(4) knowingly procure these applications, reports, or other documents to be falsely or fraudulently executed, or advise, aid in, or connive at this execution; or

(5) knowingly render inaccurate any monitoring device required to be maintained by a commission rule, order, or permit.

(b) A person commits an offense if the person violates this section. An offense under this section is a felony punishable by:

(1) imprisonment in the Texas Department of Criminal Justice for a term of not less than two years or more than five years;

(2) a fine of not more than $10,000; or

(3) both the imprisonment and the fine.

(c) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(d) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

(e) The commission may impose an administrative penalty in the manner provided by Sections 81.0531-81.0534 on a person who violates this section. The amount of the penalty may not exceed $1,000 for each violation.

Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983; Acts 1999, 76th Leg., ch. 31, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.136, eff. September 1, 2009.

SUBCHAPTER F. UNDERGROUND NATURAL GAS STORAGE AND CONSERVATION

Sec. 91.171. SHORT TITLE. This subchapter may be cited as the Underground Natural Gas Storage and Conservation Act of 1977.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.172. DECLARATION OF POLICY. The underground storage of natural gas promotes the conservation of natural gas, permits the building of reserves for orderly withdrawal in periods of peak demand, makes more readily available natural gas resources to residential, commercial, and industrial customers of this state, provides a better year-round market to the various gas fields, and promotes the public interest and welfare of this state.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June

13, 1979.

Sec. 91.173. DEFINITIONS. In this subchapter:

(1) "Person" means any natural person, partnership or other combination of natural persons, corporation, group of corporations, trust, or governmental entity.

(2) "Gas utility" means a gas utility as defined in Section 101.003, Utilities Code, or Subchapter A, Chapter 121, Utilities Code.

(3) "Natural gas" means any gaseous material composed predominantly of the following hydrocarbons or mixtures thereof: methane, ethane, propane, butane (normal or isobutane), in either its original or manufactured state, or gas which has been processed to separate it into one or more of its component parts after its withdrawal from the earth.

(4) "Native gas" means:

(A) natural gas which has not previously been withdrawn from the earth; or

(B) natural gas which has been withdrawn from the storage facility, processed, and reinjected into the storage facility.

(5) "Storage facility" means any subsurface sand, stratum, or formation used or to be used for the underground storage of natural gas and all surface and subsurface rights and appurtenances necessary to the operation of a facility for the underground storage of natural gas.

(6) "Storer" means (A) a gas utility, (B) a wholly owned subsidiary of a gas utility, (C) the parent corporation of a gas utility, or (D) a wholly owned subsidiary of a parent corporation which also wholly owns a subsidiary gas utility, but a nonutility storer included in category (B), (C), or (D) must operate the storage facility pursuant to a contract with its affiliated gas utility that provides that all withdrawals of natural gas from the storage facility must be delivered to the affiliated gas utility.

(7) "Substantially depleted" means that at least 75 percent of the estimated volume of recoverable native gas reserves originally in place in any gas-bearing sand, formation, or stratum have been withdrawn from the sand, formation, or stratum.

(8) "Interested person" means any person who enters an

appearance at the commission hearing required by Section 91.174 of this code.

(9) "Commission" means the Railroad Commission of Texas.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.41, eff. Sept. 1, 1999.

Sec. 91.174. FINDINGS OF COMMISSION. (a) Any storer desiring to exercise the right of eminent domain for the acquisition of a storage facility shall, as a condition precedent to the filing of its petition in the appropriate court, obtain from the commission an order finding:

(1) that the underground formation or stratum sought to be acquired is classified by the commission as a gas reservoir and is suitable for the underground storage of natural gas and that the storage of natural gas is necessary for the gas utility to provide adequate service to the public and is in the public interest;

(2) that the use of the formation or stratum as a storage facility will cause no injury to surface or underground water resources;

(3) that the formation or stratum does not contain native gas producible in paying quantities unless the recoverable volumes of native gas originally in place are substantially depleted and unless the formation or stratum has a greater value of ultimate use to the consuming public as a storage facility to ensure an adequate supply of natural gas or for the conservation of natural gas than the production of native gas which remains;

(4) the extent of the horizontal limits of the reservoir expected to be penetrated by displaced or injected gas; and

(5) that no portion of the formation or stratum sought to be acquired has been condemned or is being utilized for the injection, storage, and withdrawal of gas by others.

(b) The designation of a storage facility does not prevent any storer from instituting additional proceedings in the event it is later determined that the underground reservoir should be extended to prevent the escape, displacement, or withdrawal by others of injected gas.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June

13, 1979.

Sec. 91.175. COMMISSION JURISDICTION. The commission shall have jurisdiction to supervise the construction and operation of all storage facilities formed pursuant to this subchapter, and in addition to the findings required by Section 91.174 of this code, the commission shall include in any order of approval a requirement that the storer file a report each month, including each month prior to the time the storage facility is in operation, with the commission showing, for that month, the volume of gas injected and stored gas withdrawn from storage.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.176. WITHDRAWAL OF NATIVE GAS. A storer may withdraw from storage injected and stored gas as market demand dictates. However, any time a storer's withdrawals from a storage facility equal the volume of gas injected for storage, the storer shall not withdraw additional gas from the storage facility without first obtaining specific authority from the commission.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.177. STORAGE OPERATIONS MUST BE BONA FIDE. (a) A storer must initiate injection operations for gas storage within 12 months after the condemnation order of the court becomes final and storage operations must continue with reasonable diligence after that time.

(b) Should the monthly reports to the commission indicate that bona fide underground gas storage operations are not being conducted, the commission may, on its own motion or on motion of any interested person, schedule a public hearing, giving the storer the opportunity to show cause why the commission approval of the project should not be withdrawn.

(c) If the commission finds that the storage project is not being conducted in a bona fide manner, it shall issue an order

withdrawing approval of the storage facility, and all property, both mineral and surface, that was condemned by the storer shall revert to those who owned the property at the time of condemnation or their successors.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.178. RELOCATION OF FACILITIES. In the event the acquisition or operation of a storage facility acquired through the exercise of the power of eminent domain requires the relocation or alteration of any railroad, electric, telegraph, telephone, or pipeline lines or facilities, the expense of the relocation or alteration shall be borne by the storer. The expense of relocation means the actual cost incurred in providing a comparable replacement line or facility, less net salvage value from the sale or other disposition of the old facility.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.179. APPROPRIATION OF STORAGE FACILITIES; LIMITATIONS. After an order of the commission is issued approving a storage facility, a storer may condemn without further attack as to its right to condemn, any subsurface sand, stratum, or formation for the underground storage of natural gas, condemning all mineral and royalty rights as are reasonably necessary for the operation of the storage facility, subject to the limitations of this subchapter, and the storer may condemn any other interests in property that may be required, including interests in the surface estate in the sand, stratum, or formation reasonably necessary to the operation of the storage facility, provided that:

(1) no part of a reservoir is subject to condemnation unless the storer has acquired by option, lease, conveyance, or other negotiated means at least 66-2/3 percent of the ownership of minerals, including working interests, and 66-2/3 percent of the ownership of the royalty interests, computed in relation to the surface area overlying the part of the reservoir which as found by the commission to be expected to be penetrated by displaced or

injected gas;

(2) no dwelling, barn, store, or other building is subject to condemnation; and

(3) the right of condemnation is without prejudice to the rights of the owners or holders of other rights or interests of land to drill through the storage facility under such terms and conditions as the commission may prescribe for the purpose of protecting the storage facility against pollution or escape of natural gas and is without prejudice to the rights of the owners or holders of other rights or interests of the land to all other uses so long as those uses do not interfere with the operation of the storage facility.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.180. INSTITUTION OF CONDEMNATION PROCEEDINGS. (a) The finding by the commission that underground storage is in the public interest is binding on all persons whose property the storer has the right to condemn. After that finding of the commission, the storer has the right to condemn all of the underground storage area and any surface area required for the use and enjoyment of the storage facility.

(b) The storer shall initiate eminent domain proceedings in the court having jurisdiction in the area in which a portion of the land is situated. The petition shall set forth the purpose for which the property is sought to be acquired, a description of the sand, stratum, or formation and of the land under which it is alleged to be contained, the names of the owners as shown by the deed records of the county, and a description of all other property and rights sought to be appropriated for use in connection with the storage facility, including any parts of the surface necessary for any facilities incidental to the operation of the storage facility.

(c) The petition shall state facts showing that the storer has obtained the findings of the commission required by Section 91.174 of this code, that the storer in good faith has been unable to acquire the rights sought to be appropriated, that the storer has acquired, prior to the filing of the petition, by any means other than condemnation, at least 66-2/3 percent of the ownership of the minerals, including working interests, and 66-2/3 percent of the

royalty interests of the property rights in the storage facility required for that purpose, and shall describe the surface area overlying the storage facility the storer seeks to acquire and the names of the owners of those rights and interests.

(d) Where more than one tract of land is involved, all or any tracts may be joined in one proceeding, without prejudice to the right of the storer to institute additional proceedings; provided, that the failure to make service upon a defendant does not affect the right of the storer to proceed against any or all other of the defendants upon whom service has been made.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.181. EXERCISE OF RIGHT OF EMINENT DOMAIN. All proceedings in connection with the condemnation and acquisition of storage facilities shall be in accordance with Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended, and to the extent of any conflict between those articles and this subchapter, the provisions of this subchapter prevail.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.182. OWNERSHIP OF STORED GAS. All natural gas in the stratum condemned which is not native gas, and which is subsequently injected into storage facilities is personal property and is the property of the injector or its assigns, and in no event is the gas subject to the right of the owner of the surface of the land or of any mineral or royalty owner's interest under which the storage facilities lie, or of any person other than the injector to produce, take, reduce to possession, either by means of the law of capture or otherwise, waste, or otherwise interfere with or exercise any control over a storage facility. Upon failure, neglect, or refusal of the person to comply with this section, the storer has the right to compel compliance by injunction or by other appropriate relief by application to a court of competent jurisdiction.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June

13, 1979.

Sec. 91.183. RIGHTS OF PURCHASERS OF NATIVE GAS. (a) In the event there are remaining reserves of native gas in the storage facility which are dedicated to a purchaser and the purchaser and storer are unable to agree on an equitable settlement of rights with respect to the remaining native gas within a period of time that will prevent interference with the operation of the storage facility, the storer or purchaser may apply to the commission for an adjudication concerning remaining reserves of native gas.

(b) Upon application, the commission shall direct a settlement of remaining reserves of native gas that is equitable to all parties, but which does not interfere with the public benefits arising from the operation of the storage facility.

(c) In addition to any other disposition that is equitable to all parties, the commission may make a finding of the quantity of remaining recoverable native gas and an allocation of future production on a reasonable production schedule and order delivery to the purchaser by the storer of the amounts of native gas that the commission finds would have been taken by the purchaser during the term of the purchase agreement.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

Sec. 91.184. ABANDONMENT. (a) When a storer has permanently abandoned the storage facility, the storer shall file with the commission a notice of abandonment, and shall file an instrument in the deed records in the appropriate county or counties, stating that the storage has ceased, and that all property, both mineral and surface, condemned by the storer has reverted to those who owned the property at the time of condemnation, or their heirs, successors, or assigns.

(b) The storer shall also file in the deed records in the appropriate county or counties a list of the owners of the mineral, royalty, and surface owners to whom the various interests have reverted, together with an affidavit that the storer has compiled the list from a current examination of title records and that the list is

true and correct to the best of the knowledge of the affiant.

Added by Acts 1979, 66th Leg., p. 1996, ch. 785, Sec. 3, eff. June 13, 1979.

SUBCHAPTER G. UNDERGROUND HYDROCARBON STORAGE

Sec. 91.201. DEFINITIONS. In this subchapter:

(1) "Underground hydrocarbon storage facility" or "storage facility" means a subsurface sand, stratum, or geological formation used for the underground storage of hydrocarbons, and includes surface or subsurface rights and appurtenances necessary for the operation of the facility.

(2) "Hydrocarbons" means oil, gas, or products of oil or gas, as those terms are defined by Section 85.001 of this code.

(3) "Waste" means surface or subsurface waste, as defined by Section 85.046 of this code, of hydrocarbons, including, but not limited to, the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(4) "Commission" means the Railroad Commission of Texas.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.202. POLICY. It is the policy of this state and the purpose of this subchapter to prevent the waste of oil, gas, and products of oil or gas, to protect the ground and surface water of the state from unreasonable degradation, and to protect the public health, welfare, and physical property in the creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.203. AUTHORITY; RULES. (a) The commission shall supervise or monitor the construction, operation, maintenance, and closure of storage facilities.

(b) The commission may adopt reasonable rules or issue reasonable orders to implement the policies of this subchapter and may establish minimum standards regulating the creation, operation, maintenance, and abandonment of underground hydrocarbon storage facilities. The rules and standards of the commission may include, but are not limited to, requirements for monitoring, recordkeeping, and reporting, the drilling and creation of the facility, selecting the site of the facility, and for proper closure of the facility on abandonment.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.204. PERMITS. (a) The commission by rule may require a person who creates, operates, maintains, or abandons an underground hydrocarbon storage facility to obtain a permit from the commission. A permit issued by the commission may contain provisions and conditions necessary to implement the policies of this subchapter. The commission may adopt reasonable rules for the amendment, revocation, transfer, or suspension of a permit.

(b) A person desiring to obtain a permit or to amend a permit must submit an application containing the information required by the commission.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.205. AUTHORITY TO ENTER PROPERTY. Members and employees of the commission may enter public or private property at reasonable times to inspect and investigate conditions relating to the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility. The members and employees may not enter private property having management in residence without notifying the management of their presence and shall observe safety, internal security, and fire protection rules of the establishment being inspected.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.206. AUTHORITY TO EXAMINE RECORDS. Members and employees of the commission may examine and copy during regular business hours records pertaining to the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

Sec. 91.207. NOTICE OF NONCOMPLIANCE. (a) On receipt of notice from the commission that a person creating, operating, maintaining, or abandoning an underground hydrocarbon storage facility has violated this subchapter or a term, condition, or provision of a permit issued under this subchapter, an operator of the pipeline or other carrier connected to the facility shall disconnect from the facility and shall remain disconnected from the facility until notice of compliance has been received from the commission.

(b) On receipt of notice from the commission of a violation of this subchapter, a rule of the commission issued under this subchapter, or a term, condition, or provision of a permit issued under this subchapter, the owner or operator of an underground hydrocarbon storage facility shall discontinue any removal of hydrocarbons from the facility or any addition of hydrocarbons to the facility and may not begin or renew removal of hydrocarbons from the facility or begin or renew addition of hydrocarbons to the facility until notice of compliance has been received from the commission.

Added by Acts 1981, 67th Leg., p. 3167, ch. 830, Sec. 3, eff. June 17, 1981.

SUBCHAPTER H. UNDERGROUND STORAGE FACILITIES FOR NATURAL GAS

Sec. 91.251. DEFINITIONS. In this subchapter:

(1) "Intrastate gas pipeline facility" has the meaning assigned by the United States Department of Transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(2) "Natural gas" means any gaseous material composed primarily of methane in either its original or its manufactured state.

(3) "Natural gas underground storage" means the storage of natural gas beneath the surface of the earth in a formation, stratum, or reservoir.

(4) "Storage facility" has the meaning assigned by Section 91.173.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 1, eff. September 1, 2013.

Sec. 91.252. COMMISSION JURISDICTION. (a) The commission has jurisdiction over:

(1) natural gas underground storage; and

(2) surface and subsurface equipment and facilities used for natural gas underground storage.

(b) This subchapter does not apply to a storage facility that is:

(1) part of an interstate gas pipeline facility as defined by the United States Department of Transportation; and

(2) subject to federal minimum standards adopted under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 2, eff. September 1, 2013.

Sec. 91.253. COMMISSION ENFORCEMENT. (a) In addition to other authority specifically granted to the commission under this subchapter, the commission may enforce this subchapter or a rule adopted or an order or permit issued under this subchapter as provided by Section 91.207.

(b) Section 91.003 does not apply to this subchapter.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.254. INSPECTION; EXAMINATION; CREDENTIALS. (a) The commission may inspect a storage facility for compliance with the safety standards and practices and the recordkeeping requirements adopted under Sections 91.255, 91.257, and 91.258.

(b) To conduct an inspection under this section, a commissioner or a designated commission employee or agent may enter property on which a storage facility is located at a reasonable time and in a reasonable manner to examine:

(1) the facility and any related buildings or equipment; and

(2) the records required to be maintained at the storage facility under Section 91.258.

(c) A commissioner or a commission employee or agent may not enter the premises of a storage facility having personnel on the premises of the facility unless proper credentials are first presented to the person at the facility who is in charge of the property.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.255. SAFETY STANDARDS AND PRACTICES. (a) The commission by rule shall adopt safety standards and practices for natural gas underground storage and storage facilities. The standards and practices must:

(1) require the installation and periodic testing of safety devices;

(2) establish emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public;

(3) establish fire prevention and response procedures;

(4) require training for the employees of the storage facility on the safe operation of the storage facility; and

(5) establish any other safety standard or practice that is reasonable and necessary for underground natural gas storage and the safe construction, operation, and maintenance of a storage facility.

(b) The commission may adopt different standards and practices

for different types of storage facilities and may distinguish among natural gas underground storage in salt dome caverns, depleted reservoirs, and embedded salt formations.

(c) The commission may grant an exception to a standard or practice adopted under this section in a permit or amended permit issued to a storage facility if the exception will not constitute an unreasonable danger to the public.

(d) The commission may impose an additional standard or practice in a permit or amended permit issued to a storage facility.

(e) A safety standard or practice adopted by the commission for a storage facility that is part of an intrastate gas pipeline facility must be compatible with federal minimum standards.

(f) The commission shall require that records of safety device tests required by Subsection (a)(1) be:

(1) filed with the commission; or

(2) maintained by the owner or operator and made available for inspection by the commission.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.256. LIMITATION ON POWERS OF MUNICIPALITIES AND COUNTIES. A municipality or county may not adopt or enforce an ordinance that establishes a safety standard or practice applicable to a storage facility that is subject to regulation under this subchapter, another state law, or a federal law.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.257. SAFETY PROCEDURE MANUAL. The commission may require the owner or operator of a storage facility to prepare a safety procedure manual for each storage facility and to:

(1) file a copy of the manual with the commission; or

(2) make the manual available for inspection under Section 91.254.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.258. RECORDS; REPORTS. (a) An owner or operator of a

storage facility shall:

(1) maintain records and make reports relating to construction, operation, or maintenance of the facility as required by commission rule; and

(2) provide any other information required by the commission relating to construction, operation, or maintenance of the facility.

(b) The commission may provide forms for reports required under Subsection (a).

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.259. DAMAGE TO STORAGE FACILITY; DISABLING A SAFETY DEVICE. A person may not:

(1) intentionally damage or destroy a storage facility; or

(2) disable a safety device in a storage facility except to:

(A) repair, maintain, test, or replace the device; or

(B) conduct other activities that are reasonably necessary for the safe operation of the storage facility.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.260. INJUNCTION; CIVIL PENALTY. (a) The attorney general, at the request of the commission, shall bring a civil action against a person who has violated or is violating this subchapter or a rule adopted or an order or permit issued under this subchapter for:

(1) injunctive relief to restrain the person from the violation;

(2) the assessment and recovery of a civil penalty for a violation; or

(3) both injunctive relief and a civil penalty.

(b) A civil penalty assessed under this section may not exceed $25,000 for each violation.

(c) Each day of a continuing violation may be considered a separate violation for the purpose of penalty assessment.

(d) The maximum penalty assessed for a related series of violations may not exceed $500,000.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.261. ADMINISTRATIVE PENALTY. (a) The commission may assess, as provided by this section and Sections 91.262, 91.263, and 91.264, an administrative penalty against a person who violates this subchapter or a rule adopted or an order or permit issued under this subchapter.

(b) Except as provided by Subsection (c), the penalty for each violation may be in an amount not to exceed $10,000. The maximum penalty assessed under this subsection for a related series of violations may not exceed $200,000.

(c) The penalty for each violation of Section 91.259 may be in an amount not to exceed $25,000. The maximum penalty assessed under this subsection for a continuing violation may not exceed $300,000.

(d) Each day a violation continues or occurs may be considered a separate violation for the purpose of penalty assessment under Subsection (b) or (c).

(e) In determining the amount of the penalty, the commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.262. ADMINISTRATIVE PENALTY ASSESSMENT PROCEDURE. (a) An administrative penalty may be assessed only after the person charged under Section 91.261 has been given an opportunity for a public hearing. If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the penalty amount warranted by the

violation, incorporating, if appropriate, an order requiring that the penalty be paid. If appropriate, the commission shall consolidate the hearing with other proceedings.

(b) If a person charged under Section 91.261 fails to take advantage of the opportunity for a public hearing, a penalty may be assessed by the commission after it has determined that a violation occurred and the penalty amount warranted by the violation. The commission shall then issue an order requiring the penalty to be paid.

(c) The commission shall give notice of the commission's order to the person charged with the violation as provided by Chapter 2001, Government Code. The notice must include a statement of the right of the person to judicial review of the order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.263. PAYMENT OF ADMINISTRATIVE PENALTY. (a) Not later than the 30th day after the date on which the commission's order imposing an administrative penalty becomes final as provided by Section 2001.144, Government Code, the person charged with the violation shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting:

(A) the amount of the penalty;

(B) the fact of the violation; or

(C) both the amount of the penalty and the fact of the violation; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting:

(A) the amount of the penalty;

(B) the fact of the violation; or

(C) both the amount of the penalty and the fact of the violation.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

(1) stay the enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond in a form approved by the court that is effective until all judicial review of the order or decision is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) delivering a copy of the affidavit to the commission.

(c) If the commission receives a copy of an affidavit under Subsection (b), the commission may file a contest to the affidavit with the court not later than the fifth day after the date the copy is received. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(d) If the person does not pay the amount of the penalty and the penalty is not stayed, the commission may refer the matter to the attorney general for enforcement.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.

Sec. 91.264. JUDICIAL REVIEW OF ADMINISTRATIVE PENALTY. (a) Judicial review of a commission order imposing an administrative penalty is:

(1) instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) under the substantial evidence rule.

(b) If the person paid the amount of the penalty and that amount is reduced or is not assessed by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond, the court shall order the release of the bond:

(1) without further action by the person if the penalty is not assessed by the court; or

(2) on payment of the penalty in the amount determined by the court.

(c) A penalty collected under this section shall be deposited to the credit of the general revenue fund.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 5, eff. Sept. 1, 1997.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.19, eff. September 28, 2011.

SUBCHAPTER J. PAYMENT FOR PROCEEDS OF SALE

Sec. 91.401. DEFINITIONS. In this subchapter:

(1) "Payee" means any person or persons legally entitled to payment from the proceeds derived from the sale of oil or gas from an oil or gas well located in this state.

(2) "Payor" means the party who undertakes to distribute oil and gas proceeds to the payee, whether as the purchaser of the production of oil or gas generating such proceeds or as operator of the well from which such production was obtained or as lessee under the lease on which royalty is due. The payor is the first purchaser of such production of oil or gas from an oil or gas well, unless the owner of the right to produce under an oil or gas lease or pooling order and the first purchaser have entered into arrangements providing that the proceeds derived from the sale of oil or gas are to be paid by the first purchaser to the owner of the right to produce who is thereby deemed to be the payor having the responsibility of paying those proceeds received from the first purchaser to the payee.

(3) "Division order" means an agreement signed by the payee directing the distribution of proceeds from the sale of oil, gas, casinghead gas, or other related hydrocarbons. The order directs and authorizes the payor to make payment for the products taken in accordance with the division order. When used herein "division order" shall also include "transfer order".

(4) "Transfer order" means an agreement signed by a payee and his transferee (new payee) directing the payor under the division order to pay another person a share in the oil or gas produced.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 1, eff. Aug. 26, 1991.

Sec. 91.402. TIME FOR PAYMENT OF PROCEEDS. (a) The proceeds derived from the sale of oil or gas production from an oil or gas well located in this state must be paid to each payee by payor on or before 120 days after the end of the month of first sale of production from the well. After that time, payments must be made to each payee on a timely basis according to the frequency of payment specified in a lease or other written agreement between payee and payor. If the lease or other agreement does not specify the time for payment, subsequent proceeds must be paid no later than:

(1) 60 days after the end of the calendar month in which subsequent oil production is sold; or

(2) 90 days after the end of the calendar month in which subsequent gas production is sold.

(b) Payments may be withheld without interest beyond the time limits set out in Subsection (a) if:

(1) there is:

(A) a dispute concerning title that would affect distribution of payments;

(B) a reasonable doubt that the payee:

(i) has sold or authorized the sale of its share of the oil or gas to the purchaser of such production; or

(ii) has clear title to the interest in the proceeds of production; or

(C) a requirement in a title opinion that places in issue the title, identity, or whereabouts of the payee and that has not been satisfied by the payee after a reasonable request for curative information has been made by the payor; or

(2) the payments are subject to a child support lien under Chapter 157, Family Code, or an order or writ of withholding issued under Chapter 158, Family Code.

(c)(1) As a condition for the payment of proceeds from the sale of oil and gas production to payee, a payor shall be entitled to receive a signed division order from payee containing only the following provisions:

(A) the effective date of the division order, transfer

order, or other instrument;

(B) a description of the property from which the oil or gas is being produced and the type of production;

(C) the fractional and/or decimal interest in production claimed by payee, the type of interest, the certification of title to the share of production claimed, and, unless otherwise agreed to by the parties, an agreement to notify payor at least one month in advance of the effective date of any change in the interest in production owned by payee and an agreement to indemnify the payor and reimburse the payor for payments made if the payee does not have merchantable title to the production sold;

(D) the authorization to suspend payment to payee for production until the resolution of any title dispute or adverse claim asserted regarding the interest in production claimed by payee;

(E) the name, address, and taxpayer identification number of payee;

(F) provisions for the valuation and timing of settlements of oil and gas production to the payee; and

(G) a notification to the payee that other statutory rights may be available to a payee with regard to payments.

(2) Such a division order does not amend any lease or operating agreement between the interest owner and the lessee or operator or any other contracts for the purchase of oil or gas.

(d) In the alternative, the provisions of Subsection (c) of this section may be satisfied by a division order for oil payments in substantially the following form and content:

DIVISION ORDER

TO: _____ (Payor) Property No. _____

Effective _____
(Date)

The undersigned severally and not jointly certifies it is the legal owner of the interest set out below of all the oil and related liquid hydrocarbons produced from the property described below:

OPERATOR:

Property name: _____

County: _____ State: _____

Legal Description: _____

OWNER NO. _____ TAX I.D./SOC. SEC. NO. PAYEE _____
DIVISION OF INTEREST

THIS AGREEMENT DOES NOT AMEND ANY LEASE OR OPERATING AGREEMENT BETWEEN THE INTEREST OWNERS AND THE LESSEE OR OPERATOR OR ANY OTHER CONTRACTS FOR THE PURCHASE OF OIL OR GAS.

The following provisions apply to each interest owner ("owner") who executes this agreement:

TERMS OF SALE: The undersigned will be paid in accordance with the division of interests set out above. The payor shall pay all parties at the price agreed to by the operator for oil to be sold pursuant to this division order. Purchaser shall compute quantity and make corrections for gravity and temperature and make deductions for impurities.

PAYMENT: From the effective date, payment is to be made monthly by payor's check, based on this division of interest, for oil run during the preceding calendar month from the property listed above, less taxes required by law to be deducted and remitted by payor as purchaser. Payments of less than $100 may be accrued before disbursement until the total amount equals $100 or more, or until 12 months' proceeds accumulate, whichever occurs first. However, the payor may hold accumulated proceeds of less than $10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. Payee agrees to refund to payor any amounts attributable to an interest or part of an interest that payee does not own.

INDEMNITY: The owner agrees to indemnify and hold payor harmless from all liability resulting from payments made to the owner in accordance with such division of interest, including but not limited to attorney fees or judgments in connection with any suit that affects the owner's interest to which payor is made a party.

DISPUTE; WITHHOLDING OF FUNDS: If a suit is filed that affects the interest of the owner, written notice shall be given to payor by the owner together with a copy of the complaint or petition filed.

In the event of a claim or dispute that affects title to the division of interest credited herein, payor is authorized to withhold payments accruing to such interest, without interest unless otherwise required by applicable statute, until the claim or dispute is settled.

TERMINATION: Termination of this agreement is effective on the first day of the month that begins after the 30th day after the date written notice of termination is received by either party.

NOTICES: The owner agrees to notify payor in writing of any change in the division of interest, including changes of interest contingent on payment of money or expiration of time.

No change of interest is binding on payor until the recorded copy of the instrument of change or documents satisfactorily evidencing such change are furnished to payor at the time the change occurs.

Any change of interest shall be made effective on the first day of the month following receipt of such notice by payor.

Any correspondence regarding this agreement shall be furnished to the addresses listed unless otherwise advised by either party.

In addition to the legal rights provided by the terms and provisions of this division order, an owner may have certain statutory rights under the laws of this state.

Witness	Signature of Interest Owner	Social Security/ Tax I.D. No.	Address
_____	_____ _____	_____ _____	_____
_____	_____ _____	_____ _____	_____
_____	_____ _____	_____ _____	_____

Failure to furnish your Social Security/Tax I.D. number will result in withholding tax in accordance with federal law, and any tax withheld will not be refundable by payor.

(e) If an owner in a producing property will not sign a division order because it contains provisions in addition to those provisions provided for in this section, payor shall not withhold payment solely because of such refusal. If an owner in a producing property refuses to sign a division order which includes only the provisions specified in Subsection (c) of this section, payor may withhold payment without interest until such division order is signed.

(f) Payment may be remitted to a payee annually for the aggregate of up to 12 months' accumulation of proceeds if the payor owes the payee a total amount of $100 or less for production from all

oil or gas wells for which the payor must pay the payee. However, the payor may hold accumulated proceeds of less than $10 until production ceases or the payor's responsibility for making payment for production ceases, whichever occurs first. On the written request of the payee, the payor shall remit payment of accumulated proceeds to the payee annually if the payor owes the payee less than $10. On the written request of the payee, the payor shall remit payment of proceeds to the payee monthly if the payor owes the payee more than $25 but less than $100.

(g) Division orders are binding for the time and to the extent that they have been acted on and made the basis of settlements and payments, and, from the time that notice is given that settlements will not be made on the basis provided in them, they cease to be binding. Division orders are terminable by either party on 30 days written notice.

(h) The execution of a division order between a royalty owner and lessee or between a royalty owner and a party other than lessee shall not change or relieve the lessee's specific, expressed or implied obligations under an oil and gas lease, including any obligation to market production as a reasonably prudent lessee. Any provision of a division order between payee and its lessee which is in contradiction with any provision of an oil and gas lease is invalid to the extent of the contradiction.

(i) A division order may be used to clarify royalty settlement terms in the oil and gas lease. With respect to oil and/or gas sold in the field where produced or at a gathering point in the immediate vicinity, the terms "market value," "market price," "prevailing price in the field," or other such language, when used as a basis of valuation in the oil and gas lease, shall be defined as the amount realized at the mouth of the well by the seller of such production in an arm's-length transaction.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 650, Sec. 2, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 681, Sec. 1, eff. June 15, 1995. Amended by:

Acts 2017, 85th Leg., R.S., Ch. 961 (S.B. 1965), Sec. 4, eff. September 1, 2017.

Sec. 91.403. PAYMENT OF INTEREST ON LATE PAYMENTS. (a) If payment has not been made for any reason in the time limits specified in Section 91.402 of this code, the payor must pay interest to a payee beginning at the expiration of those time limits at two percentage points above the percentage rate charged on loans to depository institutions by the New York Federal Reserve Bank, unless a different rate of interest is specified in a written agreement between payor and payee.

(b) Subsection (a) of this section does not apply where payments are withheld or suspended by a payor beyond the time limits specified in Section 91.402 of this code because of the conditions enumerated in Section 91.402 of this code.

(c) The payor's obligation to pay interest and the payee's right to receive interest under Subsection (a) of this section terminate on delivery of the proceeds and accumulated interest to the comptroller as provided by Title 6, Property Code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 230, Sec. 18, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 650, Sec. 3, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 676, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 1037, Sec. 39, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 14.15, eff. Sept. 1, 1997.

Sec. 91.404. NONPAYMENT OF OIL AND GAS PROCEEDS OR INTEREST. (a) If a payee seeks relief for the failure of a payor to make timely payment of proceeds from the sale of oil or gas or an interest in oil or gas as required under Section 91.402 or 91.403 of this code, the payee must give the payor written notice by mail of that failure as a prerequisite to beginning judicial action against the payor for nonpayment.

(b) The payor has 30 days after receipt of the required notice from the payee in which to pay the proceeds due, or to respond by stating in writing a reasonable cause for nonpayment.

(c) A payee has a cause of action for nonpayment of oil or gas proceeds or interest on those proceeds as required in Section 91.402 or 91.403 of this code in any court of competent jurisdiction in the county in which the oil or gas well is located.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1,

1983.

Sec. 91.405. EXEMPTIONS. This subchapter does not apply to any royalties that are payable to:

(1) the board of regents of The University of Texas System under a lease of land dedicated to the permanent university fund; or

(2) the General Land Office as provided by Subchapter D, Chapter 52, of this code.

Added by Acts 1983, 68th Leg., p. 966, ch. 228, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.406. ATTORNEY'S FEES AND MINIMUM AWARD. If a suit is filed to collect proceeds and interest under this subchapter, the court shall include in any final judgment in favor of the plaintiff an award of:

(1) reasonable attorney's fees; and

(2) if the actual damages to the plaintiff are less than $200, an additional amount so that the total amount of damages equals $200.

Added by Acts 1987, 70th Leg., ch. 1011, Sec. 1, eff. Aug. 31, 1987.

Sec. 91.407. NOTICE OF CHANGE OF PAYOR. (a) Following a change in payor, the new payor shall give written notice to each payee to whom the payor is responsible for distributing oil or gas proceeds. The notice must be given to the payee or the payee's designee at the payee's or designee's most recent known address.

(b) Upon receipt of payee's address from the operator or lessee, the payor must provide the notice within the time permitted for payment of proceeds and in accordance with the conditions for payment provided by Section 91.402. The notice must include:

(1) the information required by Sections 91.502(1), (2), and (12) and Section 91.503; and

(2) the payor's telephone number.

(c) The notice may be given by any writing, including a division order, check stub, or attachment to a payment form.

(d) A payor that is obligated to pay interest to a payee under

Section 91.403 and that does not give the payee a notice required by this section is liable to the payee for interest under that section at a rate that is two percent more than the rate provided by that section.

Added by Acts 1997, 75th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1997.

Sec. 91.408. INFORMATION FOR PAYEES OF PROCEEDS OF PRODUCTION FROM CERTAIN GAS WELLS. (a) A payor of proceeds from the sale of gas produced from a tight formation as defined by Section 29(c)(2)(B), Internal Revenue Code of 1986, annually shall furnish the payee a statement providing the information necessary to compute the federal income tax credit provided by that section for the gas for which payment was made in the preceding year, including:

(1) information as described in Section 91.502(1) of this code; and

(2) the volume of the gas, measured in:

(A) thousands of cubic feet and heating value; or

(B) millions of British thermal units for each thousand cubic feet.

(b) A payor shall furnish a statement required by Subsection (a) not later than March 15 each year.

Added by Acts 1999, 76th Leg., ch. 609, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1483, Sec. 5, eff. Sept. 1, 1999.

SUBCHAPTER K. SALTWATER DISPOSAL PITS

Sec. 91.451. DEFINITION. In this subchapter, "saltwater disposal pit" means a collecting pit on the surface of the ground used to store or evaporate oil field brines, geothermal resource water, or other mineralized water.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.452. PROHIBITED ACTIVITY. Except as provided by this subchapter, a person conducting oil and gas development or production operations, geothermal operations, or underground hydrocarbon storage

operations may not use a saltwater disposal pit for storage or evaporation of oil field brines.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.453. COMMISSION AUTHORIZED. (a) On written application, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit on a temporary emergency basis.

(b) On written application, the commission or its designated employee may administratively authorize a person to use an impervious surface pit in conjunction with a geothermal operation, an underground hydrocarbon storage operation, or an approved saltwater disposal operation.

(c) In cases where it may be conclusively shown that use of a saltwater disposal pit can cause no pollution of surrounding productive agricultural land and no pollution of ground or surface water supplies, either because of the absence of such waters, or due to physical isolation of such waters by naturally occurring impervious barriers, the commission or its designated employee may administratively authorize a person to use a saltwater disposal pit.

(d) An authorization under this section must be in writing and must state the conditions under which any pit may be operated.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.454. REMOVAL OF AUTHORIZED PITS. (a) A person who is authorized to operate a saltwater disposal pit under Section 91.453 of this code shall close the pit within 45 days after being ordered to close the pit by the commission; provided that the commission may grant an extension or extensions for a reasonable period or periods of time on a showing of good cause or upon request for an extension by the surface owner or owners of the land upon which the pit is situated.

(b) A saltwater disposal pit must be closed in compliance with this subchapter and rules, standards, and specifications adopted by the commission.

(c) In closing a saltwater disposal pit, the person authorized to operate the pit shall remove all salt water and wastes and shall backfill and compact in compliance with commission-approved procedures.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.455. RULES, STANDARDS, AND SPECIFICATIONS. (a) The commission shall adopt rules that:

(1) define the procedures for obtaining authorization to operate a saltwater disposal pit;

(2) define the conditions under which authorizations for saltwater disposal pits will be granted;

(3) establish standards for saltwater disposal pits authorized by the commission;

(4) provide for standards for the proper closing of saltwater disposal pits authorized by the commission; and

(5) provide other standards, procedures, and requirements necessary to carry out this subchapter.

(b) The commission, by rule, shall require:

(1) liner specifications and installation procedures that are adequate to insulate a saltwater disposal pit; and

(2) the draining, cleaning, and closing of saltwater disposal pits.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.456. INJUNCTIVE RELIEF. If a person is operating a saltwater disposal pit in violation of this subchapter or the commission's rules, standards, or specifications, the commission may have the attorney general institute a suit in a district court in the county in which the saltwater disposal pit is located for injunctive relief to restrain the person from continuing to operate the pit in violation of this subchapter or the rules, standards, or specifications of the commission.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept.

1, 1983.

Sec. 91.457. REMOVAL OF UNAUTHORIZED PIT. (a) The commission may order a person who is operating a saltwater disposal pit in violation of this subchapter to close the pit in compliance with this subchapter and commission rules, standards, and specifications, at the pit operator's own expense.

(b) If a person ordered to close a saltwater disposal pit under Subsection (a) fails or refuses to close the pit in compliance with the commission's order and rules, the commission may close the pit using money from the oil and gas regulation and cleanup fund and may direct the attorney general to file suits in any courts of competent jurisdiction in Travis County to recover applicable penalties and the costs incurred by the commission in closing the saltwater disposal pit.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 18, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.20, eff. September 28, 2011.

Sec. 91.458. CRIMINAL PENALTY. (a) A person who violates Section 91.452 of this code or an order of the commission under Subsection (a), Section 91.457, commits an offense.

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

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983.

Sec. 91.459. CIVIL PENALTY. (a) A person who violates this subchapter or a rule, standard, or specification of the commission or who fails to close a saltwater disposal pit in compliance with this subchapter, a rule, standard, or specification of the commission, an order of the commission, or the authorization for the pit is subject to a civil penalty of not less than $100 nor more than $10,000 for each act of violation or failure to comply.

(b) The attorney general shall recover the civil penalty provided by Subsection (a) of this section in a court of competent jurisdiction.

(c) Any costs recovered by the attorney general under this subchapter shall be deposited in the oil and gas regulation and cleanup fund.

(d) Repealed by Acts 1991, 72nd Leg., ch. 603, Sec. 32(1), eff. Sept. 1, 1991.

Added by Acts 1983, 68th Leg., p. 5305, ch. 975, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 603, Secs. 19, 32(1), eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.21, eff. September 28, 2011.

SUBCHAPTER L. ROYALTY REPORTING STANDARDS

Sec. 91.5001. DEFINITION. In this subchapter, "payor" has the meaning assigned by Section 91.401.

Added by Acts 2001, 77th Leg., ch. 824, Sec. 1, eff. Jan. 1, 2002.

Sec. 91.501. INFORMATION REQUIRED. If payment is made to a royalty interest owner from the proceeds derived from the sale of oil or gas production pursuant to a division order, lease, servitude, or other agreement, the payor shall include the information required by Section 91.502 on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 232 (H.B. 129), Sec. 1, eff. September 1, 2017.

Sec. 91.502. TYPES OF INFORMATION PROVIDED. Each check stub, attachment to a payment form, or other remittance advice must include:

(1) the lease, property, or well name, any lease, property, or well identification number used to identify the lease, property, or well, and a county and state in which the lease, property, or well is located;

(2) the month and year during which the sales occurred for which payment is being made;

(3) the total number of barrels of oil or the total amount of gas sold;

(4) the price per barrel or per MCF of oil or gas sold;

(5) the total amount of state severance and other production taxes paid;

(6) the windfall profit tax paid on the owner's interest;

(7) any other deductions or adjustments;

(8) the net value of total sales after deductions;

(9) the owner's interest in sales from the lease, property, or well expressed as a decimal;

(10) the owner's share of the total value of sales before any tax deductions;

(11) the owner's share of the sales value less deductions; and

(12) an address and telephone number at which additional information regarding the payment may be obtained and questions may be answered.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.

Sec. 91.503. LEASE, PROPERTY, OR WELL DESCRIPTION. If a division order is not provided that includes the information required by Section 91.402(c)(1)(B), the payor must, at a minimum, provide prior to or with the first payment to which this subchapter applies the information required by Section 91.402(c)(1)(B) for the lease, property, or well for which payment of proceeds is being reported.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Jan. 1, 2002.

Sec. 91.504. PROVIDING INFORMATION ABOUT PAYMENT DEDUCTIONS AND ADJUSTMENTS, HEATING VALUE, OR LEASE IDENTIFICATION. (a) If the

payor does not explain on the check stub, attachment to the payment form, or other remittance advice, or by a separate mailing, deductions from or adjustments to payments, the payor must provide an explanation by certified mail not later than the 60th day after the date the payor receives a request from the royalty interest owner. The royalty interest owner must send the request by certified mail.

(b) If a royalty interest owner requests information by certified mail concerning the heating value of the gas produced or sold from the lease, property, or well in which the owner has an interest, the payor must, not later than the 60th day after the date the payor receives the request, provide by certified mail:

(1) a copy of the Form G-1 filed with the commission; or

(2) a check stub or separate statement that includes the information.

(c) A royalty interest owner who received a payment from a payor during the preceding calendar year may request in writing by certified mail that the payor provide a report listing the following information for the preceding year:

(1) each lease, property, or well identification number;

(2) each lease, property, or well name;

(3) the field name;

(4) the county and state in which the property is located; and

(5) the commission lease identification number or commingling permit number or any other identification number under which the production for the lease, property, or well is being reported to the state.

(d) A payor who receives a request for information under Subsection (c) shall provide the information by certified mail not later than the 60th day after the date the payor receives the request.

(e) At least once every 12 months, a payor shall provide the following statement to each royalty interest owner to whom the payor makes a payment:

Section 91.504, Texas Natural Resources Code, gives an owner of a royalty interest in oil or gas produced in Texas the right to request from a payor information about itemized deductions, the heating value of the gas, and the Railroad Commission of Texas identification number for the lease, property, or well that may not have been

provided to the royalty interest owner. The request must be in writing and must be made by certified mail. A payor must respond to a request regarding itemized deductions, the heating value of the gas, or the Railroad Commission of Texas identification number by certified mail not later than the 60th day after the date the request is received. An owner of a royalty interest in oil or gas may obtain information regarding production that has been reported to the Railroad Commission of Texas by contacting the oil and gas division of the commission or accessing the commission's website and providing the identification number of the lease and the county in which the lease is located.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:
Acts 2005, 79th Leg., Ch. 1037 (H.B. 1161), Sec. 1, eff. September 1, 2005.

Sec. 91.505. PROVIDING OTHER INFORMATION. If a royalty interest owner requests information or answers to questions concerning a payment made pursuant to this subchapter, other than information requested under Section 91.504, and the request is made by certified mail, the payor must respond to the request by certified mail not later than 30 days after the request is received.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Jan. 1, 2002.

Sec. 91.506. EXEMPTION. (a) Except as provided by Subsection (b), if the information required by Section 91.502 is provided in some other manner on a monthly basis, the payor is not required to include the information on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment.

(b) If payment is made to the royalty interest owner by a paper check delivered by mail or by means of a private delivery service, the payor may not provide the information required by Section 91.502

in a manner other than by including the information on the check stub, an attachment to the payment form, or another remittance advice that accompanies the payment unless the payor obtains, or a previous payor has obtained, the consent of the royalty interest owner to provide the information in some other manner.

Added by Acts 1985, 69th Leg., ch. 199, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 2001, 77th Leg., ch. 824, Sec. 2, eff. Sept. 1, 2002.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 232 (H.B. 129), Sec. 1, eff. September 1, 2017.

Sec. 91.507. ENFORCEMENT. (a) A royalty interest owner who does not receive the information required to be provided under Section 91.502 or 91.503 in a timely manner may send a written request for the information to the payor by certified mail.

(b) Not later than the 60th day after the date the payor receives the written request for information under this section, the payor shall provide the requested information by certified mail.

(c) If a payor fails to provide the requested information within the period specified by Subsection (b), either party may request mediation.

(d) If the royalty interest owner makes a written request for information under Section 91.504 or this section and the payor does not provide the information within the 60-day period, the royalty interest owner may bring a civil action against the payor to enforce the provisions of Section 91.504 or this section, as applicable. The prevailing party is entitled to recover reasonable court costs and attorney's fees.

Added by Acts 2001, 77th Leg., ch. 824, Sec. 3, eff. Sept. 1, 2002.

SUBCHAPTER M. ELECTRIC LOGS

Sec. 91.551. DEFINITIONS. (a) In this subchapter:

(1) "Well" means a well drilled for any purpose related to exploration for or production or storage of oil or gas or both oil and gas, including a well drilled for injection of fluids to enhance hydrocarbon recovery, disposal of produced fluids, disposal of waste from exploration or production activity, or brine mining.

(2) "Electric log" means a wireline survey, except dipmeter surveys and seismic wireline surveys, run in an open hole or a cased hole of a well for purposes of obtaining geological information.

(3) "Drilling operation" means a continuous effort to drill or deepen a well bore for which the commission has issued a permit.

(4) "Operator" means a person who assumes responsibility for the regulatory compliance of a well as shown by a form the person files with the commission and the commission approves.

(b) In this subchapter, "operator" includes a predecessor or successor operator.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 2, eff. September 1, 2005.

Sec. 91.552. ELECTRIC LOGS REQUIRED TO BE FILED; CRITERIA. (a) Except as otherwise provided by this subchapter, not later than the 90th day after the date a drilling operation is completed, the operator shall file with the commission a copy of each electric log, including each borehole section of the log at all depths, run after September 1, 2013, in conjunction with the drilling or deepening of the well that meets basic criteria established by the commission. Each electric log must be filed with the commission electronically in a manner acceptable to the commission if the commission has the technological capability to receive the electronic filing.

(b) The commission by rule shall establish criteria for electric logs to be filed with the commission.

(c) Not later than the deadline prescribed by Subsection (a) for the filing of each electric log, an operator shall file with the commission a copy of a cased hole log run after September 1, 2013, in conjunction with the drilling or deepening of a well in lieu of an electric log run after that date if:

(1) a cased hole log was run; and

(2) an electric log was not run.

(d) Nothing in this subchapter requires an operator to run an electric log in conjunction with the drilling or deepening of a well.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:

Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 3, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 1, eff. September 1, 2013.

Sec. 91.553. AVAILABILITY OF ELECTRIC LOGS. (a) Except as specifically provided by this section, each electric log filed with the commission under this subchapter is not confidential and is public information under Chapter 552, Government Code.

(b) Not later than the date by which an electric log is required to be filed with the commission under Section 91.552, the operator may file a written request with the commission asking that the electric log remain confidential and not be made available as public information. On filing this request, the electric log or copy of the electric log required to be filed with the commission may be retained by the operator, and the electric log may remain in the possession of the operator for the period of confidentiality. On filing of the request for confidentiality, the electric log becomes confidential and remains confidential for a period of:

(1) three years after the date that the drilling operation was completed, if the well is an onshore well; or

(2) five years after the date that the drilling operation was completed, if the well is a bay or offshore well.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 279, Sec. 6, eff. September 1, 2013.

(d) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 279, Sec. 6, eff. September 1, 2013.

(e) An operator required to file an electric log under this section who has held the log during a period of confidentiality shall file the log with the commission within 30 days after the conclusion of the period of confidentiality.

(f) An operator who fails to timely file with the commission a written request under Subsection (b) that an electric log remain confidential and not be made available as public information shall file the log with the commission immediately after the conclusion of the period for filing the request.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(90), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 4, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 6, eff. September 1, 2013.

Sec. 91.554. AVAILABILITY OF CONFIDENTIAL ELECTRIC LOGS. If the commission requires an electric log to be filed before the expiration of a period of confidentiality, the commission shall make that electric log available for inspection during the period of confidentiality only to:

(1) a person authorized in writing by the operator; and

(2) members of the commission and its employees in the exercise of their powers and duties under this code.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 5, eff. September 1, 2005.

Sec. 91.555. MANAGEMENT AND STORAGE OF ELECTRIC LOGS. The commission may contract with any person for the management and storage of the electric logs filed with the commission.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.

Sec. 91.556. ENFORCEMENT. If an operator fails to file an electric log as required by this subchapter, the commission may:

(1) if the well is completed as a producing well, refuse to assign an allowable or a change in allowable for production from the well for which the electric log is required until the operator files the electric log with the commission; or

(2) impose an administrative penalty on the operator in the

manner provided by Sections 81.0531-81.0534 for each well for which the operator failed to file an electric log.

Added by Acts 1985, 69th Leg., ch. 978, Sec. 1, eff. Sept. 1, 1985.
Amended by:
Acts 2005, 79th Leg., Ch. 1001 (H.B. 484), Sec. 5, eff. September 1, 2005.
Acts 2013, 83rd Leg., R.S., Ch. 279 (H.B. 878), Sec. 3, eff. September 1, 2013.

SUBCHAPTER N. OIL AND GAS HAZARDOUS WASTE

Sec. 91.601. DEFINITIONS. In this subchapter:

(1) "Oil and gas hazardous waste" means oil and gas waste that is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

(2) "Oil and gas waste" means oil and gas waste as defined in Section 91.1011 of this chapter.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.602. RULES. (a) To protect human health and the environment, the commission shall adopt and enforce rules and orders and may issue permits relating to the generation, transportation, treatment, storage, and disposal of oil and gas hazardous waste.

(b) The rules adopted by the commission under this section must be consistent with the hazardous waste regulations adopted by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.). The commission may adopt and enforce rules that are more stringent than the federal hazardous waste regulations if necessary to protect human health.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.603. ACCESS TO PROPERTY AND RECORDS. (a) A member or

employee of the commission, on proper identification, may enter public or private property to:

(1) inspect and investigate conditions relating to the generation, transportation, treatment, storage, or disposal of oil and gas hazardous waste;

(2) inspect and investigate conditions relating to the development of rules, orders, or permits under Section 91.602 of this code;

(3) monitor compliance with a rule, order, or permit of the commission; or

(4) examine and copy, during reasonable working hours, those records or memoranda of the business being investigated.

(b) A member or employee acting under this section who enters an establishment on public or private property shall observe the establishment's posted safety, internal security, and fire protection rules.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.604. CRIMINAL PENALTY. (a) A person who knowingly violates a rule, order, or permit of the commission issued under this subchapter commits an offense.

(b) An offense under this section is punishable by imprisonment for up to six months, by a fine of up to $10,000 for each day the violation is committed, or by both.

(c) Venue for prosecution under this section is in the county in which the violation is alleged to have occurred.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.

Sec. 91.605. HAZARDOUS OIL AND GAS WASTE GENERATION FEE. (a) An annual fee is imposed on each operator who generates hazardous oil and gas waste.

(b) The commission by rule shall set the fee, which must:

(1) be based on the volume of hazardous oil and gas waste generated by the operator; and

(2) be reasonably related to the costs of implementing this subchapter and enforcing the rules, orders, and permits adopted or issued by the commission under this subchapter.

(c) The commission by rule shall also prescribe the procedures by which an operator must account for the volume of hazardous oil and gas waste generated and pay the fee.

(d) This section does not apply to an operator who, at all facilities operated in this state, satisfies the requirements established by the administrator of the United States Environmental Protection Agency for a conditionally exempt small quantity generator.

(e) The fees collected under this section shall be deposited in the oil and gas regulation and cleanup fund.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 20, eff. Sept. 1, 1991.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.22, eff. September 28, 2011.

SUBCHAPTER O. RAILROAD COMMISSION VOLUNTARY CLEANUP PROGRAM

Sec. 91.651. DEFINITIONS. In this subchapter:

(1) "Contaminant" includes a waste, pollutant, or substance regulated by, or that results from an activity under the jurisdiction of, the commission under this chapter, Chapter 141 of this code, or Chapter 27, Water Code.

(2) "Environmental assessment" means the assessment described by Section 91.654.

(3) "Response action" means the cleanup or removal of a contaminant from the environment.

(4) "Voluntary cleanup" means a response action taken under and in compliance with this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.652. PURPOSE. The purpose of the voluntary cleanup program is to provide an incentive to remediate property by removing the liability to the state of lenders, developers, owners, and operators who did not cause or contribute to contamination released at the site covered by the certificate. The program does not replace other voluntary actions and is restricted to voluntary actions.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.653. ELIGIBILITY FOR VOLUNTARY CLEANUP PROGRAM. (a) Any site that is contaminated with a contaminant is eligible for participation in the voluntary cleanup program except the portion of a site that may be subject to a commission order.

(b) A person electing to participate in the voluntary cleanup program must:

(1) enter into a voluntary cleanup agreement as provided by Section 91. 656; and

(2) pay all costs of commission oversight of the voluntary cleanup.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.654. APPLICATION TO PARTICIPATE IN VOLUNTARY CLEANUP PROGRAM. (a) A person who desires to participate in the voluntary cleanup program under this subchapter must submit to the commission an application and an application fee as prescribed by this section.

(b) An application submitted under this section must:

(1) be on a form provided by the commission;

(2) contain:

(A) general information concerning:

(i) the person and the person's capability, including the person's financial capability, to perform the voluntary cleanup;

(ii) the site; and

(iii) the name, address, and telephone number of all surface and mineral owners;

(B) other background information requested by the commission;

(C) an environmental assessment of the actual or threatened release of the contaminant at the site; and

(D) if the person applying is not the surface owner, written authorization from the surface owner agreeing to the applicant's participation in the program;

(3) be accompanied by an application fee of $1,000; and

(4) be submitted according to schedules set by the commission.

(c) The environmental assessment required by Subsection (b) must include:

(1) a legal description of the site;

(2) a description of the physical characteristics of the site;

(3) the operational history of the site to the extent that history is known by the applicant;

(4) information of which the applicant is aware concerning the nature and extent of any relevant contamination or release at the site and immediately contiguous to the site, or wherever the contamination came to be located; and

(5) relevant information of which the applicant is aware concerning the potential for human exposure to contamination at the site.

(d) An application shall be processed in the order in which it is received.

(e) Fees collected under this section shall be deposited to the credit of the oil and gas regulation and cleanup fund under Section 81.067.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.23, eff. September 28, 2011.

Sec. 91.655. REJECTION OF APPLICATION. (a) The commission may reject an application submitted under Section 91.654 if:

(1) a state or federal enforcement action is pending that concerns the remediation of the contaminant described in the application;

(2) a federal grant requires an enforcement action at the site;

(3) the application is incomplete or inaccurate; or

(4) the site is ineligible under Section 91.653.

(b) If an application is rejected because it is incomplete or inaccurate, the commission, not later than the 45th day after receipt of the application, shall provide the person with a list of all information needed to make the application complete or accurate. A person may resubmit an application once without submitting an

additional application fee if the person resubmits the application not later than the 45th day after the date the commission issues notice that the application has been rejected.

(c) If the commission rejects the application, the commission shall:

(1) notify the person that the application has been rejected;

(2) explain the reasons for rejection of the application; and

(3) inform the person that the commission will refund half the person's application fee unless the person indicates a desire to resubmit the application.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.656. VOLUNTARY CLEANUP AGREEMENT. (a) Before the commission evaluates any plan or report detailing the remediation goals and proposed methods of remediation, the person desiring to participate in the voluntary cleanup program must enter into a voluntary cleanup agreement that sets forth the terms and conditions of the evaluation of the reports and the implementation of work plans.

(b) A voluntary cleanup agreement must provide for:

(1) recovery by the commission of all reasonable costs:

(A) incurred by the commission in review and oversight of the person's work plan and reports and as a result of the commission's field activities;

(B) attributable to the voluntary cleanup agreement; and

(C) in excess of the amount of fees submitted by the applicant under Section 91.654;

(2) a schedule of payments to the commission to be made by the person for recovery of all commission costs fairly attributable to the voluntary cleanup program, including direct and indirect costs of overhead, salaries, equipment, and utilities, and legal, management, and support costs; and

(3) appropriate tasks, deliverables, and schedules.

(c) The voluntary cleanup agreement shall:

(1) identify all statutes and rules with which the person

must comply;

(2) describe any work plan or report to be submitted for review by the commission, including a final report that provides all information necessary to verify that all work contemplated by the voluntary cleanup agreement has been completed;

(3) include a schedule for submitting the information required by Subdivision (2); and

(4) state the technical standards to be applied in evaluating the work plans and reports, with reference to the proposed future land use to be achieved.

(d) If an agreement is not reached between a person desiring to participate in the voluntary cleanup program and the commission on or before the 30th day after good faith negotiations have begun:

(1) the person or the commission may withdraw from the negotiations; and

(2) the commission retains the person's application fee.

(e) The commission may not initiate an enforcement action against a person who is in compliance with this section for the contamination or release that is the subject of the voluntary cleanup agreement or for activity that resulted in the contamination or release.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.657. TERMINATION OF AGREEMENT; COST RECOVERY. (a) The commission or the person in its sole discretion may terminate the agreement by giving 15 days' advance written notice to the other. Only those costs incurred or obligated by the commission before notice of termination of the agreement are recoverable under the agreement if the agreement is terminated.

(b) Termination of the agreement does not affect any right the commission has under other law to recover costs.

(c) If the person does not pay to the commission the state's costs associated with the voluntary cleanup before the 31st day after the date the person receives notice that the costs are due and owing, the attorney general, at the request of the commission, shall bring an action in the name of the state in Travis County to recover the amount owed and reasonable legal expenses, including attorney's fees, witness costs, court costs, and deposition costs.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.658. VOLUNTARY CLEANUP WORK PLANS AND REPORTS. (a) After signing a voluntary cleanup agreement, the person shall prepare and submit the appropriate work plans and reports to the commission.

(b) The commission shall review and evaluate the work plans and reports for accuracy, quality, and completeness. The commission may approve a voluntary cleanup work plan or report or, if a work plan or report is not approved, notify the person concerning additional information or commitments needed to obtain approval.

(c) At any time during the evaluation of a work plan or report, the commission may request the person to submit additional or corrected information.

(d) After considering future land use, the commission may approve work plans and reports submitted under this section that do not require removal or remedy of all discharges, releases, and threatened releases at a site if the partial response actions for the property:

(1) will be completed in a manner that protects human health and the environment;

(2) will not cause, contribute, or exacerbate discharges, releases, or threatened releases that are not required to be removed or remedied under the work plan; and

(3) will not interfere with or substantially increase the cost of response actions to address the remaining discharges, releases, or threatened releases.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.659. CERTIFICATE OF COMPLETION. (a) If the commission determines that a person has successfully completed a voluntary cleanup approved under this subchapter, the commission shall certify that the action has been completed by issuing the person a certificate of completion.

(b) The certificate of completion must:

(1) acknowledge the protection from liability provided by Section 91.660;

(2) indicate the proposed future land use; and

(3) include a legal description of the site and the name of the site's surface and mineral owner and mineral operator at the time the application to participate in the voluntary cleanup program was filed.

(c) If the commission determines that the person has not successfully completed a voluntary cleanup approved under this subchapter, the commission shall notify of this determination the person who undertook the voluntary cleanup and the current surface and mineral owner and mineral operator of the site that is the subject of the cleanup.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.660. PERSONS RELEASED FROM LIABILITY. (a) A person who is not a responsible person under Section 91.113 at the time the person applies to perform a voluntary cleanup:

(1) does not become a responsible person solely because the person signs the application; and

(2) is released, on certification under Section 91.659, from all liability to the state for cleanup of areas of the site covered by the certification, except for releases and consequences that the person causes.

(b) A person who is not a responsible person under Section 91.113 at the time the commission issues a certificate of completion under Section 91.659 is released, on issuance of the certificate, from all liability to the state for cleanup of areas of the site covered by the certificate, except for releases and consequences that the person causes.

(c) The release from liability provided by this section does not apply to a person who:

(1) caused or contributed to the contamination at the site covered by the certificate;

(2) acquires a certificate of completion by fraud, misrepresentation, or knowing failure to disclose material information;

(3) knows at the time the person acquires an interest in the site for which the certificate of completion was issued that the certificate was acquired in a manner provided by Subdivision (2); or

(4) changes land use from the use specified in the

certificate of completion if the new use may result in increased risks to human health or the environment.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

Sec. 91.661. PERMIT NOT REQUIRED. (a) A state or local permit is not required for removal or remedial action conducted on a site as part of a voluntary cleanup under this subchapter. A person shall coordinate a voluntary cleanup with ongoing federal and state waste programs.

(b) The commission by rule shall require that the person conducting the voluntary cleanup comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 34, eff. Sept. 1, 2001.

SUBCHAPTER P. CERTIFICATE OF COMPLIANCE

Sec. 91.701. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, shall secure from the commission a certificate showing compliance with that title, section, or subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.702. PROHIBITED CONNECTION. No operator of a pipeline or other carrier shall connect with any well subject to the jurisdiction of the commission under this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with that title, section, or

subchapter, as applicable, rules adopted and orders issued under that title, section, or subchapter, as applicable, and any license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.703. TEMPORARY CONNECTION. The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.704. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, a rule adopted or order issued under that title, section, or subchapter, as applicable, or a license, permit, or certificate issued to the owner or operator under that title, section, or subchapter, as applicable. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.705. EFFECT OF CANCELLATION ON OPERATOR OF PIPELINE OR OTHER CARRIER. (a) On notice from the commission to the operator of a pipeline or other carrier connected to a well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to reconnect to the well until a new certificate of compliance has been issued by the commission.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.706. EFFECT OF CANCELLATION ON OWNER OR OPERATOR OF WELL. (a) On notice from the commission that a certificate of compliance for a well has been cancelled, it shall be unlawful for the owner or operator of the well to use the well for production, injection, or disposal until a new certificate of compliance covering the well has been issued by the commission.

(b) If an operator uses or reports use of a well for production, injection, or disposal for which the operator's certificate of compliance has been cancelled, the commission may refuse to renew the operator's organization report required by Section 91.142 until the operator pays the fee required by Section 91.707 and the commission issues the certificate of compliance required for that well.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.

Sec. 91.707. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance for a well has been canceled for one or more violations of provisions of this title, Section 26.131, Water Code, or Subchapter C, Chapter 27, Water Code, rules adopted or orders issued under that title, section, or subchapter, as

applicable, or licenses, permits, or certificates issued to the owner or operator of the well under that title, section, or subchapter, as applicable, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of $300 for each severance or seal order issued for the well.

(b) Fees collected under this section shall be deposited to the oil and gas regulation and cleanup fund.

Redesignated from Natural Resources Code, Subchapter E, Chapter 85 and amended by Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 1, eff. September 1, 2007.
Amended by:
Acts 2011, 82nd Leg., 1st C.S., Ch. 4 (S.B. 1), Sec. 19.24, eff. September 28, 2011.

SUBCHAPTER Q. NOTICE OF PERMIT FOR CERTAIN OIL AND GAS OPERATIONS

Sec. 91.751. DEFINITION. In this subchapter, "surface owner" means the first person who is shown on the appraisal roll of the appraisal district established for the county in which a tract of land is located as owning an interest in the surface estate of the land at the time notice is required to be given under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.701 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.752. APPLICABILITY. This subchapter applies only to the drilling of a new oil or gas well or the reentry of a plugged and abandoned oil or gas well. This subchapter does not apply to:

(1) the plugging back, reworking, sidetracking, or deepening of an existing oil or gas well that has not been plugged and abandoned; or

(2) the use of a surface location that is the site of an existing oil or gas well that has not been plugged and abandoned to drill a horizontal oil or gas well.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.702 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.753. NOTICE REQUIRED. (a) Not later than the 15th business day after the date the commission issues an oil or gas well operator a permit to drill a new oil or gas well or to reenter a plugged and abandoned oil or gas well, the operator shall give written notice of the issuance of the permit to the surface owner of the tract of land on which the well is located or is proposed to be located.

(b) An oil or gas well operator is not required to give notice under this subchapter to a surface owner if:

(1) the operator and the surface owner have entered into an agreement that contains alternative provisions regarding the operator's obligation to give notice of oil and gas operations; or

(2) the surface owner has waived in writing the owner's right to notice under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.703 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.754. ADDRESS FOR NOTICE. The notice must be given to the surface owner at the surface owner's address as shown by the records of the county tax assessor-collector at the time the notice is given.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.704 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

Sec. 91.755. COMMISSION PERMITS AND RIGHTS OF OWNER OF MINERAL ESTATE NOT AFFECTED. (a) This subchapter does not affect the status of any rule of law to the effect that the mineral estate in land is dominant over the surface estate.

(b) Failure to give notice as required by this subchapter does not restrict, limit, work as a forfeiture of, or terminate any existing or future permit issued by the commission or right to develop the mineral estate in land.

Added by Acts 2007, 80th Leg., R.S., Ch. 210 (H.B. 630), Sec. 1, eff. September 1, 2007.
Renumbered from Natural Resources Code, Section 91.705 by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 27.001(71), eff. September 1, 2009.

SUBCHAPTER R. AUTHORIZATION FOR MULTIPLE OR ALTERNATIVE USES OF WELLS

Sec. 91.801. RULES AUTHORIZING MULTIPLE OR ALTERNATIVE USES OF WELLS. The commission shall adopt rules allowing:

(1) a person to obtain a permit for a well from the commission that authorizes the well to be used for multiple purposes; and

(2) an operator of a well authorized by a permit issued by the commission to convert the well from its authorized purpose to a new or additional purpose.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 6, eff. September 1, 2009.

Sec. 91.802. LAW APPLICABLE TO GEOLOGIC STORAGE FACILITIES AND ASSOCIATED INJECTION WELLS. (a) In this section, "anthropogenic carbon dioxide injection well" has the meaning assigned by Section 27.002, Water Code.

(b) If a well is authorized as or converted to an anthropogenic carbon dioxide injection well for geologic storage, Subchapter C-1, Chapter 27, Water Code, applies to the well.

(c) A conversion of an anthropogenic carbon dioxide injection well from use for enhanced recovery operations to use for geologic storage is not considered to be a change in the purpose of the well.

Added by Acts 2009, 81st Leg., R.S., Ch. 224 (S.B. 1387), Sec. 6, eff. September 1, 2009.

SUBCHAPTER S. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS

Sec. 91.851. DISCLOSURE OF COMPOSITION OF HYDRAULIC FRACTURING FLUIDS. (a) The commission by rule shall:

(1) require an operator of a well on which a hydraulic fracturing treatment is performed to:

(A) complete the form posted on the hydraulic fracturing chemical registry Internet website of the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission with regard to the well;

(B) include in the form completed under Paragraph (A):

(i) the total volume of water used in the hydraulic fracturing treatment; and

(ii) each chemical ingredient that is subject to the requirements of 29 C.F.R. Section 1910.1200(g)(2), as provided by a service company or chemical supplier or by the operator, if the operator provides its own chemical ingredients;

(C) post the completed form described by Paragraph (A) on the website described by that paragraph or, if the website is discontinued or permanently inoperable, post the completed form on another publicly accessible Internet website specified by the commission;

(D) submit the completed form described by Paragraph (A) to the commission with the well completion report for the well; and

(E) in addition to the completed form specified in Paragraph (D), provide to the commission a list, to be made available on a publicly accessible website, of all other chemical ingredients not listed on the completed form that were intentionally included and used for the purpose of creating a hydraulic fracturing treatment for the well. The commission rule shall ensure that an operator, service company, or supplier is not responsible for disclosing ingredients that:

(i) were not purposely added to the hydraulic fracturing treatment;

(ii) occur incidentally or are otherwise

unintentionally present in the treatment; or

(iii) in the case of the operator, are not disclosed to the operator by a service company or supplier. The commission rule shall not require that the ingredients be identified based on the additive in which they are found or that the concentration of such ingredients be provided;

(2) require a service company that performs a hydraulic fracturing treatment on a well or a supplier of an additive used in a hydraulic fracturing treatment on a well to provide the operator of the well with the information necessary for the operator to comply with Subdivision (1);

(3) prescribe a process by which an entity required to comply with Subdivision (1) or (2) may withhold and declare certain information as a trade secret for purposes of Section 552.110, Government Code, including the identity and amount of the chemical ingredient used in a hydraulic fracturing treatment;

(4) require a person who desires to challenge a claim of entitlement to trade secret protection under Subdivision (3) to file the challenge not later than the second anniversary of the date the relevant well completion report is filed with the commission;

(5) limit the persons who may challenge a claim of entitlement to trade secret protection under Subdivision (3) to:

(A) the landowner on whose property the relevant well is located;

(B) a landowner who owns property adjacent to property described by Paragraph (A); or

(C) a department or agency of this state with jurisdiction over a matter to which the claimed trade secret is relevant;

(6) require, in the event of a trade secret challenge, that the commission promptly notify the service company performing the hydraulic fracturing treatment on the relevant well, the supplier of the additive or chemical ingredient for which the trade secret claim is made, or any other owner of the trade secret being challenged and provide the owner an opportunity to substantiate its trade secret claim; and

(7) prescribe a process, consistent with 29 C.F.R. Section 1910.1200, for an entity described by Subdivision (1) or (2) to provide information, including information that is a trade secret as defined by Appendix D to 29 C.F.R. Section 1910.1200, to a health

professional or emergency responder who needs the information in accordance with Subsection (i) of that section.

(b) The protection and challenge of trade secrets under this section is governed by Chapter 552, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1179 (H.B. 3328), Sec. 1, eff. September 1, 2011.

SUBCHAPTER T. SALTWATER PIPELINES

Sec. 91.901. DEFINITIONS. In this subchapter:

(1) "Saltwater pipeline facility" means a pipeline facility that conducts water that contains salt and other substances and is intended to be used in drilling or operating a well used in the exploration for or production of oil or gas, including an injection well used for enhanced recovery operations, or is produced during drilling or operating an oil, gas, or other type of well. The term includes a pipeline facility that conducts flowback and produced water from an oil or gas well on which a hydraulic fracturing treatment has been performed to an oil and gas waste disposal well for disposal.

(2) "Saltwater pipeline operator" means a person who owns, installs, manages, operates, leases, or controls a saltwater pipeline facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2015, 84th Leg., R.S., Ch. 389 (H.B. 497), Sec. 1, eff. June 10, 2015.

Sec. 91.902. PIPELINE ON PUBLIC ROAD. A saltwater pipeline operator is entitled to install, maintain, and operate a saltwater pipeline facility through, under, along, across, or over a public road only if:

(1) the pipeline facility complies with applicable rules adopted by the Texas Transportation Commission and applicable county and municipal regulations regarding the accommodation of utility facilities on a public road or right-of-way, including regulations relating to the horizontal or vertical placement of the pipeline

facility;

(2) the saltwater pipeline operator ensures that the public road and associated facilities are promptly restored to their former condition of usefulness after the installation or maintenance of the pipeline facility is complete; and

(3) the saltwater pipeline operator leases the right-of-way or area in which the pipeline facility is installed and pays to the applicable governmental entity the fair market value of the operator's use of the right-of-way or area, unless the operator is authorized by other law to install, maintain, and operate the pipeline facility through, under, along, across, or over the public road.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.903. RELOCATION OF SALTWATER PIPELINE FACILITY FOR CERTAIN PURPOSES. (a) Except as provided by Section 203.092, Transportation Code, the Texas Transportation Commission, the commissioners court of a county, or the governing body of a municipality, as applicable, may require a saltwater pipeline operator to relocate a saltwater pipeline facility at the cost of the saltwater pipeline operator to accommodate construction or expansion of a public road or for any other public work unless the saltwater pipeline operator has a property interest in the land occupied by the facility to be relocated.

(b) The Texas Transportation Commission, the commissioners court of a county, or the governing body of a municipality, as applicable, shall give to the saltwater pipeline operator 30 days' written notice of the requirement. The notice must identify the pipeline facility to be relocated and indicate the approximate location on the new right-of-way where the saltwater pipeline operator may place the facility.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.904. CONSTRUCTION OF SUBCHAPTER. This subchapter may not be construed to:

(1) limit the authority of a saltwater pipeline facility to use a public right-of-way under any other law;

(2) affect the authority of a municipality to:

(A) regulate the use of a public right-of-way by a saltwater pipeline operator under any other law; or

(B) require payment of any applicable charge under Section 182.025, Tax Code; or

(3) require a county or municipality to:

(A) grant a right to a saltwater pipeline operator that applies to a public road or right-of-way and that is broader than the county's or municipality's legal interest in the public road or right-of-way; or

(B) grant more than a surface right to a saltwater pipeline operator in a right-of-way acquired by prescription.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.

Sec. 91.905. APPLICATION OF OTHER LAW. Section 212.153(e), Local Government Code, and Sections 203.092 and 224.008, Transportation Code, apply to saltwater pipeline operators and saltwater pipeline facilities in the same manner as they apply to utilities and utility facilities.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1408 (S.B. 514), Sec. 1, eff. June 14, 2013.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 968 (S.B. 2075), Sec. 1, eff. September 1, 2017.

CHAPTER 92. MINERAL USE OF SUBDIVIDED LAND

Sec. 92.001. PURPOSE. It is the finding of the legislature that the rapidly expanding population and development of the cities and towns of this state and the concomitant need for adequate and affordable housing and suitable job opportunities call for full and efficient utilization and development of all the land resources of this state, as well as the full development of all the minerals of this state. In view of that finding, it is the intent of the legislature that the mineral resources of this state be fully and

effectively exploited and that all land in this state be maintained and utilized to its fullest and most efficient use. It is the further finding of this legislature that it is necessary to exercise the authority of the legislature pursuant to Article XVI, Section 59, of the Constitution of the State of Texas to assure proper and orderly development of both the mineral and land resources of this state and that the enactment of this chapter will protect the rights and welfare of the citizens of this state.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

Sec. 92.002. DEFINITIONS. In this chapter:

(1) "Operations site" means a surface area of two or more acres located in whole or in part within a qualified subdivision, designated on the subdivision plat, that an owner of a possessory mineral interest may use to explore for and produce minerals.

(2) "Possessory mineral interest" means a mineral interest that includes the right to use the land surface for exploration and production of minerals.

(3) "Qualified subdivision" means a tract of land of not more than 640 acres:

(A) that is located in a county having a population in excess of 400,000, or in a county having a population in excess of 140,000 that borders a county having a population in excess of 400,000 or located on a barrier island;

(B) that has been subdivided in a manner authorized by law by the surface owners for residential, commercial, or industrial use; and

(C) that contains an operations site for each separate 80 acres within the 640-acre tract and provisions for road and pipeline easements to allow use of the operations site.

(4) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 1, eff. June 11, 1987.

Sec. 92.003. CREATION OF SUBDIVISION. The surface owners of a parcel of land may create a qualified subdivision on the land if a plat of the subdivision has been approved by the railroad commission and filed with the clerk of the county in which the subdivision is to be located.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

Sec. 92.004. HEARING AND ORDER BY RAILROAD COMMISSION. (a) The railroad commission shall adopt rules governing the contents of an application for a qualified subdivision. An application must be accompanied by a plat of the subdivision showing the applicant's proposed location of operations sites and road and pipeline easements.

(b) The railroad commission shall, on notice to the applicant and owners of possessory mineral interests, hold a hearing on the application at which the commission shall consider the adequacy of the number and location of operations sites and road and pipeline easements. At the hearing on the application, evidence may be presented by the applicant and the owners of possessory mineral interests. After considering the evidence, the commission shall approve, reject, or amend the application to ensure that the mineral resources of the subdivision are fully and effectively exploited. The applicant or the owner of the possessory mineral interest may appeal the order of the railroad commission as provided by law.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 2, eff. June 11, 1987.

Sec. 92.005. USE OF OPERATIONS SITE. (a) An owner of a possessory mineral interest within a qualified subdivision may use only the surface contained in designated operations sites for exploration, development, and production of minerals and the designated easements only as necessary to adequately use the operations sites.

(b) The owner of the possessory mineral interest may drill wells or extend well bores from an operations site or from a site

outside of the qualified subdivision under the surface of other parts of the qualified subdivision if the operations do not unreasonably interfere with the use of the surface of the qualified subdivision outside the operations site.

(c) This section ceases to apply to a subdivision if, by the third anniversary of the date on which the order of the commission becomes final:

(1) the surface owner has not commenced actual construction of roads or utilities within the qualified subdivision; and

(2) a lot within the qualified subdivision has not been sold to a third party.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts, 1987, 70th Leg., ch. 274, Sec. 3, eff. June 11, 1987.

Sec. 92.006. AMENDMENT, REPLAT, OR ABANDONMENT. All or any portion of a qualified subdivision may be amended, replatted, or abandoned by the surface owner. An amendment or replat, however, may not alter, diminish, or impair the usefulness of an operations site or appurtenant road or pipeline easement unless the amendment or replat is approved by the commission in accordance with Section 92.003 of this code.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1987, 70th Leg., ch. 274, Sec. 4, eff. June 11, 1987.

Sec. 92.007. MUNICIPAL AUTHORITY. This chapter does not affect the authority of a municipality to require approval of subdivision plats or the authority of a home-rule city to regulate exploration and development of mineral interests within its boundaries.

Added by Acts 1983, 68th Leg., p. 4009, ch. 624, Sec. 1, eff. Aug. 29, 1983.

SUBTITLE C. POOLING AND COOPERATIVE AGREEMENTS
CHAPTER 101. COOPERATIVE DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 101.001. DEFINITION. In this chapter, "commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.002. EXISTING AGREEMENT RIGHTS. None of the provisions in this chapter restrict any of the rights that a person now may have to make and enter into unitization and pooling agreements.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.003. APPLICABILITY. None of the provisions in this chapter impair the power of the commission to prevent waste under the oil and gas conservation laws of the state except as provided in Section 101.004 or repeal, modify, or impair any of the provisions of Sections 85.002 through 85.003, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, or 85.381 through 85.385, Subchapter J of Chapter 85, or Subchapter P of Chapter 91, relating to oil and gas conservation.

Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 816 (S.B. 1670), Sec. 7, eff. September 1, 2007.

Sec. 101.004. CONFLICT WITH ANTITRUST ACTS. (a) Agreements and operations under agreements which are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the

provisions in this chapter are intended as a reasonable exception to that law, necessary for the public interests stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, and finds that the provisions in this chapter are not a reasonable exception to said Chapter 15, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring Chapter 15, Business & Commerce Code, as amended, or any portion of it, invalid.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. COOPERATIVE AGREEMENTS IN SECONDARY RECOVERY OPERATIONS

Sec. 101.011. AUTHORIZED AGREEMENTS FOR SEPARATELY OWNED PROPERTIES. Subject to the approval of the commission, as provided in this chapter, persons owning or controlling production, leases, royalties, or other interests in separate property in the same oil field, gas field, or oil and gas field may voluntarily enter into and perform agreements for either or both of the following purposes:

(1) to establish pooled units, necessary to effect secondary recovery operations for oil or gas, including those known as cycling, recycling, repressuring, water flooding, and pressure maintenance and to establish and operate cooperative facilities necessary for the secondary recovery operations;

(2) to establish pooled units and cooperative facilities necessary for the conservation and use of gas, including those for extracting and separating the hydrocarbons from the natural gas or casinghead gas and returning the dry gas to a formation underlying any land or leases committed to the agreement.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.012. PERSONS BOUND BY AGREEMENTS. Agreements for pooled units and cooperative facilities do not bind a landowner, royalty owner, lessor, lessee, overriding royalty owner, or any other

person who does not execute them. The agreements bind only the persons who execute them, their heirs, successors, assigns, and legal representatives. No person shall be compelled or required to enter into such an agreement.

Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.013. COMMISSION APPROVAL. (a) Agreements for pooled units and cooperative facilities are not legal or effective until the commission finds, after application, notice, and hearing:

(1) that the agreement is necessary to accomplish the purposes specified in Section 101.011 of this code;

(2) that it is in the interest of the public welfare as being reasonably necessary to prevent waste and to promote the conservation of oil or gas or both;

(3) that the rights of the owners of all the interests in the field, whether signers of the unit agreement or not, would be protected under its operation;

(4) that the estimated additional cost, if any, of conducting the operation will not exceed the value of additional oil and gas so recovered, by or on behalf of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, lien claimants, and others as well as the lessees;

(5) that other available or existing methods or facilities for secondary recovery operations or for the conservation and utilization of gas in the particular area or field concerned or for both are inadequate for the purposes; and

(6) that the area covered by the unit agreement contains only that part of the field that has reasonably been defined by development, and that the owners of interests in the oil and gas under each tract of land in the area reasonably defined by development are given an opportunity to enter into the unit on the same yardstick basis as the owners of interests in the oil and gas under the other tracts in the unit.

(b) A finding by the commission that the area described in the unit agreement is insufficient or covers more acreage than is necessary to accomplish the purposes of this chapter is grounds for

the disapproval of the agreement.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.014. JOINTLY OWNED PROPERTIES. None of the provisions in this chapter shall be construed to require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.015. COMMISSION REGULATION. An agreement executed under the provisions of this chapter is subject to any valid order or rule of the commission relating to location, spacing, proration, conservation, or other matters within the authority of the commission, whether adopted prior to or subsequent to the execution of the agreement.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.016. PERMISSIBLE PROVISIONS. (a) An agreement authorized by this chapter may provide for the location and spacing of input wells and for the extension of leases covering any part of land committed to the unit as long as operations for drilling or reworking are conducted on the unit or as long as production of oil or gas in paying quantities is had from any part of the land or leases committed to the unit. However, no agreement may relieve an operator from the obligation to develop reasonably the land and leases as a whole committed to the unit.

(b) An agreement authorized by this chapter may provide that the dry gas after extraction of hydrocarbons may be returned to a formation underlying any land or leases committed to the agreement and may provide that no royalties are required to be paid on the gas so returned.

Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.017. PROHIBITED PROVISIONS. (a) No agreement authorized by this chapter may attempt to contain the field rules for the area or field, or provide for or limit the amount of production of oil or gas from the unit properties, those provisions being solely the province of the commission.

(b) No agreement authorized by this chapter may provide directly or indirectly for the cooperative refining of crude petroleum, distillate, condensate, or gas, or any by-product of crude petroleum, distillate, condensate, or gas. The extraction of liquid hydrocarbons from gas, and the separation of the liquid hydrocarbons into propanes, butanes, ethanes, distillate, condensate, and natural gasoline, without any additional processing of any of them, is not considered to be refining.

(c) No agreement authorized by this chapter may provide for the cooperative marketing of crude petroleum, condensate, distillate, or gas, or any by-products of them.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 101.018. EFFECT OF APPROVAL OUTSIDE OF UNIT. The approval of an agreement authorized by this chapter shall not of itself be construed as a finding that operations of a different kind or character in the portion of the field outside of the unit are wasteful or not in the interest of conservation.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PUBLIC LAND

Sec. 101.051. AUTHORITY OF COMMISSIONER OF GENERAL LAND OFFICE. Subject to the approval specified in Section 101.052 of this code, the Commissioner of the General Land Office, on behalf of the State of Texas or of any fund belonging to the state, may execute contracts committing to the agreements declared lawful by the provisions of

this chapter (1) the royalty interests in oil or gas or both reserved to the state, or any fund of the state, by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency, or authority of the state or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 33, eff. Sept. 1, 1987.

Sec. 101.052. NECESSARY APPROVAL BY OTHER PERSONS AND STATE AGENCIES. (a) An agreement that commits (1) the royalty interests in land set apart by the constitution and laws of this state for the permanent free school fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, or (2) the free royalty interests, whether leased or unleased, reserved to the state pursuant to Section 51.201 or 51.054 of this code, must be approved by the School Land Board.

(b) An agreement that covers land leased for oil and gas under the Relinquishment Act, codified as Subchapter F in Chapter 52 of this code, must be executed by the owners of the soil.

(c) An agreement that commits the royalty interests in land or areas other than those covered by Subsections (a) and (b) of this section must be approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of the land or areas for oil and gas.

Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 34, eff. Sept. 1, 1987.

CHAPTER 102. POOLING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 102.001. TITLE. This chapter may be cited as the Mineral Interest Pooling Act.

Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.002. DEFINITIONS. In this chapter:

(1) "Mineral" means and is limited to oil and gas.

(2) "Commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.003. APPLICATION TO CERTAIN RESERVOIRS. The provisions of this chapter do not apply to any reservoir discovered and produced before March 8, 1961.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.004. APPLICATION TO PUBLIC LAND. (a) The provisions of this chapter do not apply to land owned by the State of Texas nor to land in which the State of Texas has an interest directly or indirectly.

(b) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority or jurisdiction of the Commissioner of the General Land Office or the State of Texas with respect to any land or interest in land in which the Commissioner of the General Land Office has jurisdiction.

(c) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority, jurisdiction, or consent of the Commissioner of the General Land Office on the pooling of any interest now subject to the jurisdiction, authority, or consent of the Commissioner of the General Land Office.

(d) With the approval or consent first obtained, or at the instance of the Commissioner of the General Land Office, or any board or agency having jurisdiction, the land in which the State of Texas has an interest as described in this chapter may be pooled under the provisions of this chapter.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

Sec. 102.011. AUTHORITY OF COMMISSION. When two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the commission, on the application of an owner specified in Section 102.012 of this code and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.012. OWNERS AUTHORIZED TO APPLY FOR POOLING. The following interested owners may apply to the commission for the pooling of mineral interests:

(1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;

(2) the owner of any working interest; or

(3) any owner of an unleased tract other than a royalty owner.

Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.013. REQUIRED VOLUNTARY POOLING OFFER. (a) The applicant shall set forth in detail the nature of voluntary pooling

offers made to the owners of the other interests in the proposed unit.

(b) The commission shall dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant.

(c) An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.014. PRODUCTIVE ACREAGE EQUAL TO STANDARD PRORATION UNIT. (a) The commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily.

(b) If the conditions specified in Subsection (a) of this section exist, the commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.015. PROHIBITED PROVISIONS IN OPERATING AGREEMENT. A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable if it provides for an operating agreement containing any of the following provisions:

(1) preferential right of the operator to purchase mineral interests in the unit;

(2) a call on or option to purchase production from the unit;

(3) operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) prohibition against nonoperators questioning the operation of the unit.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.016. NOTICE OF HEARING. On the filing of an application for pooling of interests into a unit under the provisions of this chapter, at least 30 days notice before hearing on the application shall be given to all interested parties, including notice by publication if there are unknown owners or owners whose whereabouts are unknown. The notice shall be given in the manner and form prescribed by the commission.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.017. POOLING ORDER. (a) After notice and hearing, all orders effecting the pooling shall be made on terms and conditions that are fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share.

(b) Each order shall:

(1) describe the land included in the unit, identifying the reservoir to which it applies;

(2) designate the location of the well; and

(3) appoint an operator for the unit.

Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.018. ACREAGE SUBJECT TO POOLING. The commission shall pool only the acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

SUBCHAPTER C. RIGHTS IN A POOLED UNIT

Sec. 102.051. OWNERSHIP OF PRODUCTION. (a) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

(b) Notwithstanding the provisions in Subsection (a) of this section, if the commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, the commission shall allocate the production so that each tract will receive its fair share, which for any nonconsenting owner shall be no less than he would receive under a surface-acreage allocation.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.052. DRILLING AND COMPLETION COSTS. (a) As to an owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs.

(b) If there is a dispute relative to the costs, the commission shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.053. EFFECT OF OPERATIONS. (a) The operations on and production from any portion of a unit for which a pooling order has been entered shall be considered for all purposes the conduct of the operations on and production from each separately owned tract in the

pooled unit. If a gas well on a pooled unit is shut-in, it shall be considered that the shut-in gas well is on each separately owned tract in the pooled unit.

(b) If only part of a tract is included in the unit, operations on, production from, or a shut-in gas well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the provisions of the lease.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. DISSOLUTION OF UNIT

Sec. 102.081. DISSOLVED WITH CONSENT OF OWNERS. A unit established by order of the commission under this chapter may not be modified or dissolved subsequently without the consent of all mineral owners affected, except as necessary to permit its enlargement as provided in Subchapter B of this chapter.

Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.082. AUTOMATIC DISSOLUTION. A unit is automatically dissolved:

(1) two years after its effective date if no production or drilling operations have been had on the unit or surface location for the unit;

(2) six months after the completion of a dry hole on the unit; or

(3) six months after cessation of production from the unit.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 57 (H.B. 3226), Sec. 1, eff. September 1, 2019.

Sec. 102.083. TERMINATION OF POOLED LEASE. On termination of a

lease pooled by order of the commission under authority granted by this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. JUDICIAL REVIEW

Sec. 102.111. RIGHT TO APPEAL. A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 102.112. VENUE. Appeal shall be to the district court of the county in which the land or any part of the land covered by the order is located and not elsewhere, notwithstanding the provisions of Sections 85.241 through 85.243 of this code.

Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 103. COOPERATIVE FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 103.001. DEFINITION. In this chapter, "commission" means the Railroad Commission of Texas.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.002. RIGHTS EXISTING ON MAY 12, 1953. None of the provisions in this chapter restrict any of the rights that persons had on May 12, 1953, to make and enter into contracts for the construction and operation of cooperative facilities as provided in

this chapter.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.003. CONFLICT WITH ANTITRUST LAWS. (a) Agreements and operations under agreements that are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception necessary for the public interest stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and the laws cited in Subsections (a) and (b) of this section and finds that the provisions in this chapter are not a reasonable exception, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring the cited laws, or any portion of them, invalid.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

Sec. 103.041. AUTHORIZED COOPERATIVE FACILITIES FOR SEPARATELY OWNED PROPERTY. The commission may approve agreements by persons owning or controlling leases or other interests in separate property in oil fields, gas fields, or oil and gas fields for the construction and operation of cooperative facilities necessary for the conservation and utilization of gas, including facilities for extracting and separating hydrocarbons from gas or casinghead gas.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.042. COMMISSION APPROVAL. Agreements for the construction and operation of cooperative facilities shall be approved by the commission only after application, notice, and hearing, and a finding by the commission that the cooperative facilities are in the interest of conservation and that secondary recovery operations are not feasible or necessary.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.043. COOPERATIVE REFINING. (a) No agreement for the construction or operation of cooperative facilities may provide directly or indirectly for the cooperative refining of oil, distillate, condensate, or gas, or any by-product of oil, distillate, condensate, or gas.

(b) The extraction of liquid hydrocarbons from gas and the separation of liquid hydrocarbons into butanes, propanes, ethanes, distillate, condensate, and natural gasoline without any additional processing of any of them is not considered to be refining.

Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.044. COOPERATIVE MARKETING. No agreement for the construction or operation of cooperative facilities may provide for the cooperative marketing of oil, condensate, distillate, or gas, or any by-product of oil, condensate, distillate, or gas.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.045. EFFECT OF APPROVAL ON OPERATIONS IN OTHER FIELDS. The approval of an agreement authorized by this chapter is not of itself a finding that similar operations in other fields are wasteful or not in the interest of conservation.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 103.046. JOINTLY OWNED PROPERTY. None of the provisions in this chapter require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBTITLE D. REGULATION OF SPECIFIC BUSINESSES AND OCCUPATIONS
CHAPTER 111. COMMON CARRIERS, PUBLIC UTILITIES, AND COMMON PURCHASERS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 111.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Public utility" means a person, association of persons, or corporation that owns, operates, or manages crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipeline, pipelines, or otherwise. The term does not include an electric cooperative, as that term is defined by Section 11.003, Utilities Code, or its subsidiary, that sells electricity at wholesale and that owns or operates an underground storage facility and provides gas storage services to the public for hire if the gas storage facility is predominantly operated to support the integration of renewable resources. Such a gas storage facility may not have a working gas capacity of greater than five billion cubic feet.

Acts 1977, 65th Leg., p. 2578, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 3, eff. April 21, 2011.

Sec. 111.002. COMMON CARRIERS UNDER CHAPTER. A person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business

of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state;

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form;

(6) owns, operates, or manages, wholly or partially, pipelines for the transportation of carbon dioxide or hydrogen in whatever form to or for the public for hire, but only if such person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter; or

(7) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification, in whatever form, to or for the public for hire, but only if the person files with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 2, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 199, ch. 93, Sec. 1, eff. Aug. 31, 1981; Acts 1991, 72nd Leg., ch. 689, Sec. 1, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 22 (H.B. 1967), Sec. 1, eff. September 1, 2007.

Sec. 111.003. APPLICABILITY OF CHAPTER. (a) The provisions of this chapter do not apply to pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of a common carrier as defined in Section 111.002 of this code.

(b) The provisions of this chapter do not apply to any property of a common carrier, as defined in Section 111.002 of this code, that is not a part of or necessarily incident to its pipeline transportation system.

(c) The provisions of this chapter, and any common law requirements or limitations applicable to a common carrier, do not apply to an underground storage facility owned or operated by an electric cooperative, as that term is defined by Section 11.003, Utilities Code, or its subsidiary, that sells electricity at wholesale and offers or provides gas storage services to the public for hire if the gas storage facility is predominantly operated to support the integration of renewable resources. Such a gas storage facility may not have a working gas capacity of greater than five billion cubic feet.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 4 (S.B. 312), Sec. 4, eff. April 21, 2011.

Sec. 111.004. GENERAL RESTRICTION ON TRANSPORTATION OF OIL. No person, including a common carrier, may transport crude oil or petroleum in this state unless the crude oil or petroleum has been

produced or purchased or both in accordance with the laws of this state or a rule of the commission made under those laws, or both.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. COMMON CARRIERS

Sec. 111.011. REGULATION IN PUBLIC INTEREST. The operation of common carriers covered by this chapter is a business in which the public is interested and is subject to regulation by law.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.012. GENERAL JURISDICTION OF COMMISSION. Particular powers granted to the commission by the provisions of this chapter do not limit the general powers conferred by other laws.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.013. CONTROL OF PIPELINES. A pipeline subject to the provisions of this chapter not exempt under Section 111.003, which is used in connection with the business of purchasing or purchasing and selling crude petroleum, or in the business of transporting coal, carbon dioxide, hydrogen, feedstock for carbon gasification, the products of carbon gasification, or the derivative products of carbon gasification in whatever form by pipeline for hire in Texas, shall be operated as a common carrier and shall be subject to the jurisdiction of the commission.

Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 2, eff. Sept. 1, 1977; Acts 1981, 67th Leg., p. 199, ch. 93, Sec. 1, eff. Aug. 31, 1981; Acts 1991, 72nd Leg., ch. 689, Sec. 2, eff. Sept. 1, 1991.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 22 (H.B. 1967), Sec. 2, eff.

September 1, 2007.

Sec. 111.014. PUBLICATION OF TARIFFS. Common carriers shall make and publish their tariffs under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.015. TRANSPORTATION WITHOUT DISCRIMINATION. Subject to the law and the rules prescribed by the commission, a common carrier shall receive and transport crude petroleum delivered to it for transportation and perform its other related duties without discrimination.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.016. DISCRIMINATION BETWEEN SHIPPERS. (a) A common carrier in its operations as a common carrier shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum.

(b) A common carrier shall not discriminate in the transportation of crude petroleum produced or purchased by itself directly or indirectly.

(c) In this connection, a pipeline is a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.017. EQUAL COMPENSATION FOR LIKE SERVICE. (a) No common carrier in its operations as a common carrier may charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from

another for a like and contemporaneous service.

(b) The provisions of Subsection (a) of this section do not limit the right of the commission to prescribe rules and rates from or to some places that are different from rules or rates for transportation from or to other places.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.018. EFFECT OF COMMISSION ORDER. A common carrier is not guilty of discrimination when obeying an order of the commission.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.019. RIGHT OF EMINENT DOMAIN. (a) Common carriers have the right and power of eminent domain.

(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common carrier may enter on and condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.

(c) Upon written request by a resident or owner of land crossed by a common carrier pipeline, the common carrier must disclose material data safety sheets concerning the commodities transported by the common carrier required by the commission and the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. Section 11001 et seq.). Such disclosure must be in writing and must be mailed or delivered to the resident or landowner within 30 days of receipt of the request.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 630, Sec. 1, eff. Sept. 1, 1993.

Sec. 111.0191. COSTS OF RELOCATION OF PROPERTY. In the event a common carrier pipeline in the exercise of the power of eminent

domain or police power or any other power granted under this chapter makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any railroad, electric transmission, telegraph or telephone lines, properties and facilities, or pipeline, all such relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of such common carrier pipeline. The term "sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting therefrom the net salvage value derived from the old facility.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 4, eff. Sept. 1, 1977.

Sec. 111.0192. LIMITATIONS ON THE POWERS OF EMINENT DOMAIN IN CERTAIN SITUATIONS. (a) The right of eminent domain granted under this chapter to any pipelines transporting coal in whatever form shall not include and cannot be used to condemn water or water rights for use in the transportation of coal by pipeline, and no Texas water from any source shall be used in connection with the transportation, maintenance, or operation of a coal slurry pipeline (except water used for drinking, toilet, bath, or other personal uses at pumping stations or offices) within the State of Texas unless the Texas Natural Resource Conservation Commission shall determine, after public hearing, that the use will not be detrimental to the water supply of the area from which the water is sought to be extracted.

(b) The right of eminent domain granted under this chapter to any pipeline transporting coal in whatever form shall not include the power to take land or any interest in land, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other mineral, but this provision does not impair the right of any such entity to acquire title to real property for pipelines, including cooling ponds and related surface installations and equipment.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 6, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.271, eff.

Sept. 1, 1995.

Sec. 111.0193. RESTORATION OF PROPERTY. Every condemnation award granted under this chapter shall require that the condemnor restore the property which is the subject of the award to its former condition as near as reasonably practicable.

Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, Sec. 7, eff. Sept. 1, 1977.

Sec. 111.0194. PIPELINE EASEMENTS. (a) Unless the terms of the grant or the condemnation judgment expressly provide otherwise, or the easement rights otherwise prescriptively owned through actual use are greater, an easement created through grant or through the power of eminent domain for the benefit of a single common carrier pipeline for which the power of eminent domain is available under Section 111.019 of this code as of January 1, 1994, is presumed to create an easement in favor of the common carrier pipeline, or a successor in interest to the common carrier pipeline, that extends only a width of 50 feet as to each pipeline laid under the grant or judgment in eminent domain prior to January 1, 1994.

(b) The presumption in Subsection (a) of this section is not applicable to pipeline easements of a common carrier pipeline granted under the terms of an oil and gas lease or oil, gas, and mineral lease, or to any easement which authorizes the construction of gathering lines.

(c) The presumption set out in Subsection (a) of this section on the limitation of width may be rebutted by evidence on behalf of the common carrier pipeline that a greater width is reasonably needed for purposes of operation, construction of additional lines under the grant or judgment in an eminent domain proceeding, maintenance, repair, replacement, safety, surveillance, or as a buffer zone for protection of the safe operation of the common carrier pipeline, together with such other evidence as a court may deem relevant to establish the extent of an easement in excess of 50 feet in width.

(d) The presumption in Subsection (a) of this section shall apply separately as to each pipeline under a grant or judgment which allows more than one pipeline on the subservient estate.

(e) This section shall not be deemed to limit any rights of ingress to or egress from easements that may exist under the original grant, prescriptive rights, or common law.

(f) This section does not limit or otherwise affect the rights of parties engaged in litigation before January 1, 1994.

Added by Acts 1993, 73rd Leg., ch. 787, Sec. 1, eff. Jan. 1, 1994.

Sec. 111.020. PIPELINE ON PUBLIC STREAM OR HIGHWAY. (a) Subject to the provisions of Subsection (b) of this section, all common carriers are entitled to lay, maintain, and operate along, across, or under a public stream or highway in this state pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of the pipelines.

(b) The right to run a pipeline or telegraph or telephone line along, across, or over a public road or highway may be exercised only on condition that:

(1) it does not interfere with traffic on the road or highway;

(2) the road or highway is promptly restored to its former condition of usefulness;

(3) the restoration of the road or highway is subject also to the supervision of the commissioners court or other proper local authority; and

(4) no pipes or pipelines are laid parallel with and on a public highway closer than 15 feet from the improved section of the highway except with the approval and under the direction of the commissioners court of the county in which the public highway is located.

(c) The common carrier shall compensate the county or road district, respectively, for any damage done to the public road in the exercise of the privileges conferred.

(d) A person may acquire the right conferred in this section by filing with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 111.021. PIPELINE UNDER RAILROAD, STREET RAILROAD, OR CANAL. A common carrier is entitled to lay its pipe or pipeline under any railroad, railroad right-of-way, street railroad, or canal in this state.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.022. RIGHT TO USE STREET OR ALLEY IN CITY OR TOWN. The provisions of this chapter do not grant a pipeline company the right to use a public street or alley in an incorporated or unincorporated city or town except with express permission of the governing body of the city or town or the right to lay its pipes or pipelines along and under a street or alley in an incorporated city or town except with the consent and under the direction of the governing body of the city or town.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.023. EXCHANGE OF FACILITIES. (a) A common carrier shall exchange crude petroleum tonnage with each like common carrier.

(b) When a necessity exists, the commission may require connections and facilities for the interchange of crude petroleum tonnage to be made at every locality reached by both pipelines, subject to the rules and rates made by the commission.

(c) A common carrier pipeline under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on the pipeline.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.024. LIMIT ON AMOUNT OF OIL CARRIED. No common carrier may be required at any time to receive for shipment from any

person more than 3,000 barrels of petroleum in any one day.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.025. ABANDONING CONNECTIONS. (a) No common carrier may abandon any of its connections or lines except under authority of a permit granted by the commission or with written consent of the owner or duly authorized agent of the wells to which connections are made.

(b) Before granting a permit to abandon any connection, the commission shall issue proper notice and hold a hearing as provided by law.

Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PUBLIC UTILITIES

Sec. 111.051. APPLICABILITY OF STATUTE TO PUBLIC UTILITIES. A public utility is subject to the provisions of this subchapter and other provisions of this chapter relating to public utilities.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.052. DISCRIMINATION BY PUBLIC UTILITY. No public utility in its operations as a public utility may discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same or similar circumstances, in the storage of crude oil.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.053. BOND OF PUBLIC UTILITY. (a) Before engaging in business as a public utility, a person, association, or corporation that is to engage in business as a public utility shall file a bond

in an amount not to exceed $25,000 that is properly executed and made payable to the State of Texas with the amount of the bond and the sureties on the bond subject to the approval of the commission.

(b) In lieu of a bond as required by Subsection (a), a person, association, or corporation may deposit with the commission:

(1) bonds of the United States;

(2) certificates of indebtedness issued by the United States secretary of the treasury;

(3) bonds of this state or a county, municipality, or school district of this state; or

(4) shares or share accounts of savings and loan associations organized under the laws of this state or federal savings and loan associations domiciled in this state, if the shares or share accounts are insured by the Federal Deposit Insurance Corporation.

(c) The bond or securities in lieu of the bond as provided by Subsection (b) shall be approved by the commission before the bond is filed or the securities deposited.

(d) After proper notice and hearing as provided by law, the amount of the bond may be changed from time to time by order of the commission, according to the volume of business done or to be done by the public utility.

(e) The bond shall be conditioned that the public utility will observe the applicable provisions of this subchapter and chapter and the rules of the commission insofar as its business is regulated and controlled by the commission and that the public utility will exercise ordinary care in the storage, preservation, handling, and delivery of petroleum products entrusted to it and shall guarantee the classification, measurements, and grades made by it under its authority and in conformity herewith.

(f) The bond shall be for the benefit of the patrons of the public utility and their assignees as though they were named obligees in the bond and they shall severally have the right of suit on the bond.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.107, eff. Sept. 1, 2001.

Sec. 111.054. LIEN FOR STORAGE CHARGES. A public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against the commodity or the transportation charges accrued to or paid or advanced by it or both and the lien is superior to all other liens on the commodity except a lien for taxes.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. COMMON PURCHASERS

Sec. 111.081. DEFINITION OF COMMON PURCHASER. (a) In this subchapter, "common purchaser" means:

(1) every person that purchases crude oil or petroleum produced within the limits of this state and that is affiliated through stock ownership, common control, contract, or in any other manner with a common carrier by pipeline or is itself a common carrier;

(2) every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

(3) every person that operates a crude oil gathering system, whether by pipeline or truck, that may purchase crude oil or petroleum in this state, whether or not it is a common carrier or affiliated with a common carrier; and

(4) the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck.

(b) The persons covered by Subdivision (3), Subsection (a) of this section do not include persons transporting only crude oil from property in which they own an operating interest.

(c) The operation of a crude oil gathering system by a person, association of persons, or corporation transporting only crude oil from property in which it owns an operating interest shall not be considered to be included in Subdivision (4) of Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.082. PURPOSE FOR INCLUDING CERTAIN ENTITIES UNDER REGULATION AS COMMON PURCHASERS. Persons, gas pipeline companies, and gas purchasers claiming or exercising the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state are regulated as common purchasers under this subchapter for the purpose of further conserving the natural gas resources of this state.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.083. DUTY OF CERTAIN COMMON PURCHASERS. A common purchaser as defined in Subdivision (2), Subsection (a), Section 111.081 of this code shall purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed by the commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.084. OPERATION OF GATHERING SYSTEMS FOR CRUDE PETROLEUM. The operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase or purchase and sale of crude petroleum is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law. Therefore, it is provided that the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be conducted unless the person operating the gathering system being used in this manner in connection with this business is a common purchaser under this law and subject to the jurisdiction conferred on the commission over common purchasers.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.085. APPLICABILITY OF RATE PROVISIONS TO CERTAIN COMMON PURCHASERS. Common purchasers as defined in Subdivision (3), Subsection (a), Section 111.081 of this code are subject to the same regulation concerning rates and charges for gathering, transporting, loading, and delivering crude petroleum as set out in Subchapter F of this chapter.

Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.086. DISCRIMINATION BETWEEN PERSONS AND FIELDS. (a) A common purchaser shall purchase oil offered to it for purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state.

(b) A question of justice or reasonableness under this section shall be determined by the commission taking into consideration the production and age of wells in respective fields and all other proper factors.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.087. CONDITIONS IN TAKING PRODUCTION. (a) No common purchaser may discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or production in which the common carrier may be directly or indirectly interested in whole or part.

(b) For the purpose of prorating the purchase of crude oil or petroleum to be marketed, the production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that the production bears to the total production offered for market in the field.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 111.088. COMMISSION RELIEF. After proper notice and hearing as provided by law, the commission may relieve any common purchaser from the duty of purchasing petroleum of inferior quality or grade.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.089. DISCRIMINATION AS TO ROYALTY OIL. (a) In making purchases of royalty oil, a common purchaser shall comply with the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and shall not discriminate between royalty owners or landowners or both in making those purchases.

(b) No common purchaser may unreasonably delay payments to a royalty owner or landowner or both in purchases of said oil or gas.

(c) In addition to other penalties, the royalty owner or landowner or both have a cause of action for violation of this section against the common purchaser for damages and may file suit for damages in any court of competent jurisdiction in the county in which the royalty lies.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.090. COMPLIANCE BY COMMON PURCHASERS. The commission shall enforce compliance with this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code and after notice and hearing, may make rules and orders defining the distance that extensions or gathering lines shall be made to all oil or gas wells and other rules or orders that may be necessary to carry out those provisions cited in this section and to prevent discrimination.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 111.091. PREVENTION OF DISCRIMINATION. (a) The commission shall make inquiry in each field concerning the connection of various producers, and if discrimination is found to be practiced by a common purchaser, the commission shall issue an order to the common purchaser to make any reasonable extensions of its lines, reasonable connections, and ratable purchases that will prevent the discrimination.

(b) The commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer discriminated against under Subsection (a) of this section.

Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.092. INJUNCTION TO PREVENT DISCRIMINATION. On information that discrimination is practiced in its purchases by a common purchaser, the commission shall request the attorney general to bring a mandatory injunction suit against the common purchaser to compel the reasonable extensions that are necessary to prevent discrimination.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.093. FORFEITURE OF CHARTER OF DOMESTIC CORPORATION. (a) If a domestic corporation that is a common purchaser violates any provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or any valid rule promulgated by the commission under those provisions, the attorney general may bring suit in a district court in Travis County against the corporation to forfeit the charter of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom

the action is brought under this section, the charter of the corporation may be forfeited and the injunction may be granted, provided that the forfeiture and injunction are in addition to all other penalties.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.094. FORFEITURE OF CHARTER OF FOREIGN CORPORATION. (a) If a foreign corporation that is a common purchaser violates a provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or a valid rule promulgated by the commission under these provisions, the attorney general may bring suit in a district court of Travis County to cancel the permit of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought, the permit may be cancelled and the injunction may be granted, provided the cancellation and injunction are in addition to all other penalties.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.095. ACTION FOR DAMAGES. (a) If a person is discriminated against by a common purchaser in favor of the production of the common purchaser, the person may bring an action for damages against the common purchaser.

(b) An action for damages under this section may be brought in any court of competent jurisdiction in the county in which the damage occurred.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.096. DUTIES AND RESPONSIBILITIES OF COMMON PURCHASERS, PURCHASERS, GATHERERS, AND TRANSPORTERS. Notwithstanding the

provisions of any statute or law including the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, none of the provisions of Sections 111.081, 111.084, 111.085, and 111.091 of this code shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer, or transporter of natural gas, residue gas, or casinghead gas.

Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.097. ANTITRUST LAWS UNAFFECTED. (a) No provision of this subchapter may be construed as modifying, limiting, changing, repealing, or affecting in any manner any part of the present law of this state defining and regulating trusts, monopolies, and conspiracies in restraint of trade.

(b) No provision of this subchapter may be construed as authorizing any agreement or combination or both of capital, skill, and acts or any of these and any combination or consolidation now prohibited by the antitrust laws of this state or laws of this state prohibiting trusts, monopolies, and conspiracies in restraint of trade or both.

(c) No provision of this subchapter is intended or may be construed as authorizing any agreement, act, combination, consolidation, or other arrangement that is now prohibited under the antitrust laws of this state or the laws prohibiting and defining trusts, monopolies, and conspiracies in restraint of trade or both.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. POWERS AND DUTIES OF THE COMMISSION

Sec. 111.131. COMMISSION RULES FOR COMMON CARRIERS. The commission shall establish and promulgate rules for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation and shall prescribe and enforce rules, in the manner provided by law, for the government and control

of common carriers with respect to their pipelines and receiving, transferring, and loading facilities.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.132. COMMISSION RULES FOR PUBLIC UTILITIES. (a) The commission shall establish and enforce rules governing:

(1) the character of facilities to be furnished by public utilities;

(2) the forms of receipts to be issued by public utilities; and

(3) the rates, charges, and rules for the storage of crude petroleum by public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, and the delivery of their products.

(b) The commission also shall exercise its authority to establish and enforce rules governing public utilities on petition of an interested person.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.133. ENFORCEMENT BY COMMISSION. The commission may make rules for the enforcement of the provisions of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.132, 111.136, 111.137, and 111.140 of this code.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.134. NOTICE AND HEARING. No order of the commission establishing, prescribing, or modifying rules or rates may be made except after a hearing and after not less than 10 days nor more than 30 days notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipeline or pipelines affected.

Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.135. VALIDITY OF COMMISSION ORDERS. Until set aside or vacated by an order or decree of a court of competent jurisdiction, all orders of the commission relating to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.136. REVIEW OF ORDERS. A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.137. ENLARGEMENT AND EXTENSION OF FACILITIES. On its own initiative without complaint, and after proper notice and hearing, as provided by law the commission may authorize or require by order any common carrier owning or operating pipelines in this state or owning, operating, or managing crude petroleum storage tanks or facilities for the public for hire, to extend or enlarge those pipelines or storage facilities if the extension or enlargement is found to be reasonable and required in the public interest and the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.138. BOOKS AND RECORDS. The commission may investigate the books and records kept by any common carrier in connection with its business.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.139. REPORTS. (a) The commission shall require each common carrier to make reports including duly verified monthly reports of:

(1) the total quantities of crude petroleum owned by the common carrier in the state;

(2) the total quantities of crude petroleum held by the common carrier in storage for others in the state; and

(3) the common carrier's unfilled storage capacity.

(b) The commission shall give no publicity to the stock of crude petroleum on hand of any particular common carrier, but the commission may, in its discretion, make public the aggregate amounts held by all common carriers making reports and their aggregate storage capacity.

(c) The commission shall require each common carrier to mail, return receipt requested, a copy of all spill or leak reports required by the commission to residents or owners of land upon which a spill or leak has occurred within 30 days of filing the report with the commission. If a resident or owner of land has not registered with the commission, the common carrier is relieved of the requirement to mail copies of spill or leak reports to the resident or landowner. The commission shall provide a procedure for residents and owners of land crossed by a common carrier pipeline to voluntarily register their names and mailing addresses with the commission.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 630, Sec. 2, eff. Sept. 1, 1993.

Sec. 111.140. FILING MONTHLY STATEMENTS. (a) On or before the 20th day of each calendar month, every common carrier in this state and every public utility shall file with the commission and shall post in a conspicuous place accessible to the general public in its principal office and each of its division offices in this state a statement, duly verified, containing information concerning its

business during the preceding calendar month as follows:

(1) the amount of crude or refined petroleum in the actual and immediate custody of the common carrier or public utility at the beginning and close of the month and the location or holding point of this petroleum, including the location and designation of each plant or place of deposit and the name of its owner;

(2) the amount of crude or refined petroleum received by the common carrier or public utility during the month;

(3) the amount of crude or refined petroleum that was delivered by the common carrier or public utility during the month;

(4) the amount of crude or refined petroleum held by the common carrier or public utility for itself or parent or affiliated organizations; and

(5) the available empty storage owned or controlled by the common carrier or public utility and its location.

(b) The information to be provided under Subsection (a) of this section shall be set out separately as to crude petroleum and each refined product of crude petroleum in each statement.

Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.141. GRADES OF OIL. (a) The commission shall make rules for:

(1) the ascertainment of the amount of water and other foreign matter in oil tendered for transportation;

(2) deduction for water and other foreign matter; and

(3) the amount of deduction to be made for temperature, leakage, and evaporation.

(b) No common carrier may be required to receive or transport any crude petroleum except that which is marketable under rules prescribed by the commission.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.142. EQUITABLE APPORTIONMENT OF EXCESSIVE AMOUNT OF CRUDE PETROLEUM. If more crude petroleum is offered for transportation by a common carrier than can be transported

immediately, it shall be apportioned equitably, and the commission may make and enforce general or specific rules for equitable apportionment.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. RATES

Sec. 111.181. ESTABLISHING AND PROMULGATING RATES. The commission shall establish and promulgate rates of charges for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.182. ITEMS INCLUDED IN RATES. The rates established and promulgated by the commission shall include both single- and joint-line transportation, deduction for evaporation and shrinkage, demurrage, storage, and overage charges and all other similar items.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.183. BASIS FOR RATE. The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.184. DISCRETION OF COMMISSION. The commission has reasonable latitude in establishing and adjusting competitive rates.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.185. TEMPORARY RATES. If a common carrier makes application or files a tariff to establish a new rate on either a new or old line, a temporary rate may be placed into effect immediately on filing the tariff with the commission.

Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.186. REPARATION AND REIMBURSEMENT. If rates have been filed, each shipper who pays these filed rates is entitled to reparation or reimbursement of all excess rates or transportation charges paid over and above the rate that is finally determined on the shipments.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.187. REIMBURSEMENT OF EXCESS CHARGES. If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.188. ANNUAL RATE HEARING. The commission shall hold a general hearing once each year for the purpose of adjusting rates to conform to the basis of rates and charges provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.189. HEARING AND DETERMINATION OF RATES. If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the basis provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.190. HEARINGS TO ADJUST RATES. On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the basis provided in this subchapter.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT

Sec. 111.221. COMPLAINTS; JURISDICTION TO HEAR COMPLAINTS. Any person or the attorney general on behalf of the state may institute proceedings before the commission or apply for a hearing before the commission on any question relating to the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and the commission has jurisdiction to hear and determine these questions after giving proper notice as provided by law.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.222. APPLICATION FOR RECEIVERSHIP. If a rule or order promulgated by the commission under Subchapter C, D, or F of this chapter or Section 111.004, 111.025, 111.131 through 111.133,

111.136, 111.137, or 111.140 of this code is found by a court to be valid in whole or part in a suit to which the commission is a party, and if another party to the suit or other proceedings violates the rule, order, or judgment or allows any property owned or controlled by him to be used in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting a receiver be appointed as provided in Section 111.223 of this code.

Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.223. APPOINTMENT OF RECEIVER. On application by the commission and after notice and hearing, the judge of the trial court may appoint a receiver of the property involved in violating the rule, order, or judgment and shall set a proper bond for the receiver.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.224. DUTIES AND RESPONSIBILITIES OF RECEIVER. As soon as the receiver has qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.225. MOTION TO DISSOLVE RECEIVERSHIP. A party whose property has been placed in the hands of a receiver may move to dissolve the receivership and discharge the receiver only on showing that the party has not wilfully violated nor allowed property owned or controlled by him to be used in violating the rule, order, or judgment or on other good cause shown.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.226. BOND. (a) Before dissolving the receivership or discharging the receiver, the court, in its discretion, may require the party applying for the dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule or order judged to be valid.

(b) In determining the amount of the bond, the judge shall take into consideration all the facts and circumstances surrounding the parties that he considers necessary to determine the reasonableness of the amount of the bond.

(c) If the bond is made by a bonding or surety company, it shall be made by a company authorized to do business in this state.

(d) The bond shall be made payable to and be approved by the judge of the court and shall be for the use and benefit of and may be sued on by all persons who suffer damage by reason of any further violation by the party giving the bond and who brings suit on the bond.

(e) From time to time on motion, the court may increase or decrease the amount of the bond and may require new or additional sureties as the facts may warrant or justify.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.227. PROVISIONS APPLICABLE TO ENFORCEMENT. The provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, apply in the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code.

Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. PENALTIES

Sec. 111.261. PENALTY RECOVERABLE BY STATE. A common carrier under this chapter is subject to a penalty of not less than $100 nor more than $1,000 for each offense, recoverable in the name of the state, if the common carrier:

(1) violates Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code or a valid order of the commission; or

(2) fails to perform a duty imposed by Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.262. PENALTY RECOVERABLE BY AGGRIEVED PARTY. A common carrier is subject to a penalty of not less than $100 nor more than $1,000 for each offense of unlawful discrimination as defined in Sections 111.015 through 111.017 of this code. The suit shall be brought in the name of and for the use of the aggrieved person, corporation, or association of persons.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 111.263. PENALTY RECOVERABLE BY STATE AND AGGRIEVED PARTY. (a) Any person who violates a provision of Subchapter C, D, F, or G of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code, a rule promulgated under these subchapters or sections, or an order passed by the commission under these subchapters or sections or one of these rules, on violation, is subject to a penalty of not less than $100 nor more than $1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

(b) One-half of the penalty may be recovered by and for the use of any person against whom there is an unlawful discrimination as defined in Subchapter D of this chapter, and this suit shall be brought in the name of and for the use of the party or parties aggrieved.

Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. COMMON CARRIER COAL PIPELINES

Sec. 111.301. CERTIFICATE REQUIRED. A person that is a common carrier under Subsection (5), Section 111.002 of this code must apply for and be issued a certificate of public convenience and necessity from the commission pursuant to the commission's authority to issue certificates under Section 111.302 of this code if the commission finds after a hearing that the public convenience and necessity will be served by the construction and operation of the pipeline.

Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.302. COMMISSION AUTHORITY TO ISSUE CERTIFICATES. (a) The commission is further authorized, empowered, and directed to issue certificates of public convenience and necessity to pipelines transporting coal in whatever form or mixture for hire in Texas if the commission finds that the public convenience and necessity will be served in that existing facilities will not be able to provide the transportation as economically or efficiently as the proposed pipeline.

(b) In exercising its powers and duties under this section, the commission may not issue a permit for or attempt to regulate in any manner the condemnation, appropriation, or acquisition of surface or ground water in Texas.

(c) The commission shall not issue a permit, certificate, or any authority to any applicant whose rates and charges are not regulated by government authority, either state or federal, and that state or federal regulations insure to the public and to the ultimate electric consumer that the contracts, rates, and charges shall be just and reasonable, nondiscriminatory, and offering no preference or advantage to any person, corporation, entity, or group.

(d) The commission shall not issue a permit, certificate, or any authority to any applicant whose pipeline transporting coal in whatever form unless the pipeline transporting coal in whatever form is to be buried at least 36 inches below the surface, except in such

instances in which the commission specifically exempts the 36-inch depth requirement and unless the pipeline transporting coal in whatever form conforms to all applicable state or federal regulations concerning the operation, maintenance, and construction of that same pipeline.

(e) The commission shall condition the issuance of a certification upon the requirement that the pipeline company shall take no more than 50 feet in width of right-of-way under the power of eminent domain, except for temporary work areas adjacent to the right-of-way and then not to exceed 100 feet in width for the duration of the construction period only; and provided that any condemnation award granted under this chapter shall take into account the damages to the remainder caused by the exercise of eminent domain for the temporary work areas.

Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.303. CERTIFICATION PROCEDURE. (a) The coal pipeline applicant shall publish, in accordance with regulations promulgated by the commission and existing law, a notice that it has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation in each county in which the project will be located. The notice shall, among other things, specify to the extent practicable the land which would be subject to the power of eminent domain.

(b) The commission shall then conduct public hearings in areas of the state along the prospective pipeline right-of-way as it shall determine shall be necessary to give property owners an opportunity to be heard. The commission is vested with authority to alter the right-of-way to meet with local objections.

Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.304. TRANSPORTATION CONTRACT. No common carrier pipeline transporting coal in whatever form shall contract or otherwise agree to transport coal for a term in excess of three years without prior approval of that contract or agreement by the

commission which approval shall be given on determination that the contract or agreement is in the public interest in which case the contract or agreement shall be enforceable.

Acts 1977, 65th Leg., p. 3693, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977.

Sec. 111.305. OTHER AGENCIES. (a) The commission shall seek and act on the recommendations of the Texas Natural Resource Conservation Commission, the Governor's Energy Advisory Council, or their successors responsible for environmental determinations and shall specify the proper use and disposal of nondischargeable water.

(b) Neither the authority conveyed to the commission by this subchapter to issue certificates and to promulgate rules governing pipelines transporting coal in whatever form nor the powers and duties conveyed on those pipelines by this chapter shall affect, diminish, or otherwise limit the jurisdiction and authority of the Texas Natural Resource Conservation Commission to regulate by applicable rules the acquisition, use, control, disposition, and discharge of water or water rights in Texas.

Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, Sec. 3, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.272, eff. Sept. 1, 1995.

SUBCHAPTER J. WELL WASTEWATER CORPORATION

Sec. 111.401. DEFINITION. In this subchapter, "well wastewater" means water containing salt or other substances produced during drilling or operating oil and other types of wells.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.402. CREATION OF WELL WASTEWATER CORPORATION. A well wastewater corporation may be created to gather, store, and impound well wastewater and to prevent the flow of the well wastewater into a stream when the stream may be used for irrigation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.403. CORPORATION POWERS. In addition to the general powers conferred to a private corporation, a well wastewater corporation may acquire, own, and operate a ditch, canal, pipeline, levee, or reservoir, and an associated appliance as appropriate to gather, impound, or store well wastewater and to protect a reservoir from inflow or damage by surface water.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.404. CONDEMNATION. (a) A well wastewater corporation may condemn land or a property right necessary for a purpose of the corporation.

(b) A well wastewater corporation's ditch, canal, or pipeline may cross under a highway, canal, pipeline, railroad, or tram or logging road if the use of the highway, canal, pipeline, railroad, or tram or logging road is not impaired except for the time necessary to construct the crossing.

(c) Without the consent of the appropriate authority, a well wastewater corporation's ditch, canal, or pipeline may not:

(1) pass through a cemetery;

(2) pass under a residence or public building; or

(3) cross a street or alley of a municipality.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.405. SERVICE TO WELL WASTEWATER PRODUCERS. (a) A well wastewater corporation shall serve all well wastewater producers in the area in which the corporation operates to the extent the corporation has adequate facilities to gather, impound, and store well wastewater.

(b) A well wastewater corporation:

(1) shall serve a well wastewater producer in proportion to the needs of all of the producers in the area;

(2) shall charge a fair and reasonable fee for its services; and

(3) may not discriminate between different producers under similar conditions.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

Sec. 111.406. OWNERSHIP OF STOCK. A corporation interested in the proper disposition of well wastewater may purchase, own, or vote stock in a well wastewater corporation.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 6, eff. Sept. 1, 1997.

CHAPTER 112. USED OIL FIELD EQUIPMENT DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 112.001. DEFINITIONS. In this chapter:

(1) "Pipeline equipment" means all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance, and operation of a pipeline for the transportation of oil, gas, water, or other liquid or gaseous substance.

(2) "Oil and gas equipment" means equipment and materials that are part of or incident to the exploration, development, maintenance, and operation of oil and gas properties and includes equipment and materials that are part of or incident to the construction, maintenance, and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(3) "Used materials" means pipeline equipment or oil and gas equipment after the equipment has once been placed in the use for which it first was manufactured and intended.

(4) "Dealer" means every person whose primary business is buying, selling, or otherwise dealing in used materials and who has a fixed, designated place or places of business within the state.

(5) "Broker" means every person whose primary business is buying, selling, or otherwise dealing in used materials as agent for the seller of the used materials, or as agent for the buyer of the used materials, or as agent for both.

(6) "Peddler" means every person who is not a dealer or broker and whose primary business is buying, selling, or otherwise dealing in used materials.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2339, ch. 573, Sec. 1, eff. Aug. 31, 1981.

Sec. 112.002. APPLICABILITY. The provisions of this chapter shall not apply if the reasonable market value of the purchase made is less than $25.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. SALE OF USED EQUIPMENT

Sec. 112.011. BILL OF SALE. Before purchasing or acquiring by exchange used materials, a dealer, broker, or peddler shall require that a bill of sale for the used materials be executed by the seller or the person who exchanges the materials. The dealer, broker, or peddler shall keep a copy of each bill of sale at his place of business.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2339, ch. 573, Sec. 2, eff. Aug. 31, 1981.

Sec. 112.012. REQUIRED INFORMATION. (a) The bill of sale shall include:

(1) the name and address of the dealer, broker, or peddler;

(2) the serial number, if any;

(3) the kind, make, size, weight, length, and quantity of the used materials purchased or acquired by exchange;

(4) the date of the purchase or acquisition by exchange, if different from the date of the bill of sale;

(5) the name and address of the seller or person who exchanged the materials;

(6) the place of location of the property at the time purchased or acquired by exchange;

(7) the license number of each motor vehicle used in transporting a purchased or exchanged item to the dealer's, broker's, or peddler's place of business; and

(8) the driver's license number of the seller or person who exchanged the materials.

(b) A dealer, broker, or peddler under this chapter shall keep

at his regular place of business all records required to be kept by this chapter for two years after the date of the purchase or acquisition by exchange of the materials.

Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 3, eff. Aug. 31, 1981.

SUBCHAPTER C. ENFORCEMENT; PENALTY

Sec. 112.031. INJUNCTIVE RELIEF. In the name and on behalf of the State of Texas, the attorney general or any district attorney or county attorney in this state may enjoin a dealer, peddler, or broker from continuing in business in this state as a dealer, peddler, or broker on violation of any of the provisions of this chapter.

Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 112.032. CRIMINAL PENALTY. A person, dealer, peddler, or broker who violates any of the provisions of this chapter is guilty of a misdemeanor and on conviction is subject to a fine of not less than $500 for each violation.

Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 4, eff. Aug. 31, 1981.

Sec. 112.033. INSPECTION. (a) Any Texas Ranger or other officer commissioned by the Department of Public Safety, any sheriff or deputy sheriff, or any municipal police officer may enter the business premises of a dealer, broker, or peddler under this chapter during normal business hours to inspect the premises and the records of the dealer, broker, or peddler to determine whether the dealer, broker, or peddler is in compliance with this chapter.

(b) A dealer, broker, or peddler under this chapter must allow and shall not interfere with inspections conducted pursuant to this chapter.

(c) Each inspection conducted under this chapter shall be

commenced and completed with reasonable promptness and shall be conducted in a reasonable manner.

Added by Acts 1981, 67th Leg., p. 2340, ch. 573, Sec. 5, eff. Aug. 31, 1981. Amended by Acts 1983, 68th Leg., p. 4526, ch. 741, Sec. 3, eff. Sept. 1, 1983.

CHAPTER 113. LIQUEFIED PETROLEUM GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 113.001. TITLE. This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.002. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) Repealed by Acts 2001, 77th Leg., ch. 1233, Sec. 76(2), eff. Sept. 1, 2001.

(3) "Employee" means any individual who renders or performs any services or labor for compensation and includes individuals hired on a part-time or temporary basis or a full-time or permanent basis including an owner-employee.

(4) "Liquefied petroleum gas," "LPG," or "LP-gas" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(5) "Container" means any receptacle designed for the transportation or storage of LPG or any receptacle designed for the purpose of receiving injections of LPG for use or consumption by or through an LPG system.

(6) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(7) "LPG system" means all piping, fittings, valves, and equipment, excluding containers and appliances, that connect one or more containers to one or more appliances that use or consume LPG.

(8) "Transport system" means any and all piping, fittings, valves, and equipment on a transport, excluding the container.

(9) "Transfer system" means all piping, fittings, valves, and equipment utilized in dispensing LPG between containers.

(10) "Transport" means any bobtail or semitrailer equipped with one or more containers.

(11) "Subframing" means the attachment of supporting structural members to the pads of a container but does not include welding directly to or on the container.

(12) "Representative" means the individual designated to the commission by a license applicant or licensee as the principal person in authority and, in the case of a licensee other than a category "P" licensee, actively supervising the conduct of the licensee's LPG activities.

(13) "Person" means any individual, partnership, firm, corporation, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision.

(14) "Registrant" means any person exempt from the licensing requirements, as established by rule pursuant to Section 113.081 of this code, who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission.

(15) "Intermodal portable tank" means a portable tank built according to the United States Department of Transportation specifications and designed primarily for international intermodal use.

(16) "Intermodal container" means a freight container designed and constructed for interchangeable use in two or more modes of transport.

(17) "Mobile fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(18) "Mobile fuel container" means an LPG container mounted on a vehicle to store LPG as the fuel supply to an auxiliary engine other than the engine to propel the vehicle or for other uses on the vehicle.

(19) "Motor fuel system" means an LPG system, excluding the container, to supply LP-gas as a fuel to an engine used to propel the vehicle.

(20) "Motor fuel container" means an LPG container mounted

on a vehicle to store LPG as the fuel supply to an engine used to propel the vehicle.

(21) "Portable cylinder" means a receptacle constructed to United States Department of Transportation specifications, designed to be moved readily, and used for the storage of LPG for connection to an appliance or an LPG system. The term does not include a cylinder designed for use on a forklift or similar equipment.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 1, eff. June 11, 1987; Acts 1991, 72nd Leg., ch. 725, Sec. 1, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 1, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 611, Sec. 1, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 76(2), eff. Sept. 1, 2001.

Sec. 113.003. EXCEPTIONS. (a) None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car;

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing;

(5) underground storage facilities other than LP-gas containers designed for underground use;

(6) any LP-gas container having a water capacity of one gallon or less, or to any LP-gas piping system or appliance attached or connected to such container; or

(7) a railcar loading rack used by a pipeline company, producer, refiner, or manufacturer.

(b) Nothing in Subsection (a) of this section shall be construed to exempt truck loading racks from the jurisdiction of the commission under this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept.

1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 1, eff. Sept. 1, 1995.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 113.011. REGULATION OF LIQUEFIED PETROLEUM GAS ACTIVITIES. The commission shall administer and enforce the laws of this state and the rules and standards of the commission relating to liquefied petroleum gas.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.014. EMPLOYEES. Sufficient employees shall be provided for the enforcement of this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.015. FUNDS FOR FINANCING REGULATION OF LPG ACTIVITIES. The commission shall look only to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of regulating liquefied petroleum gas activities and administering this chapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 3, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

SUBCHAPTER C. RULES AND STANDARDS

Sec. 113.051. ADOPTION OF RULES AND STANDARDS. Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.0511. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee; or

(4) restricts the licensee's advertisement under a trade name.

Added by Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.

Sec. 113.052. ADOPTION OF NATIONAL CODES. The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.053. EFFECT ON CERTAIN CONTAINERS. Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and

subject to the regulations of the United States Department of Transportation or to containers that are owned or used by the United States government.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.054. EFFECT ON OTHER LAW. The rules and standards promulgated and adopted by the commission under Section 113.051 preempt and supersede any ordinance, order, or rule adopted by a political subdivision of this state relating to any aspect or phase of the liquefied petroleum gas industry. A political subdivision may petition the commission's executive director for permission to promulgate more restrictive rules and standards only if the political subdivision can prove that the more restrictive rules and standards enhance public safety.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1020 (H.B. 2663), Sec. 1, eff. September 1, 2011.

SUBCHAPTER D. LICENSING AND REGISTRATION

Sec. 113.080. DEFINITIONS. In this subchapter:

(1) "Carrier" means a person licensed for transportation of LP-gas by transport, including the loading and unloading of LP-gas, and the installation and repair of transport systems.

(2) "Portable cylinder exchange service" means an operation conducted under a commission license for the sale of LP-gas in portable cylinders that are not filled on site and that have an LP-gas capacity not greater than 21 pounds.

(3) "Retail and wholesale dealer" means a person licensed for any LP-gas activity except:

(A) the assembly, repair, subframing, or testing of LP-gas containers; or

(B) the sale or installation of motor fuel systems or mobile fuel systems that have an engine with a rating of more than 25 horsepower.

(4) "Testing laboratory" means a person licensed for testing containers, motor fuel systems or mobile fuel systems, transfer systems, or transport systems for the purpose of determining

the safety of the containers or systems for LP-gas service, including the necessary installation, disconnection, reconnection, testing, or repair of motor fuel systems or mobile fuel systems, transfer systems, or transport systems involved in the testing of containers.

(5) "Transport outfitter" means a person licensed to:

(A) subframe, test, or sell LP-gas transport containers;

(B) test LP-gas storage containers;

(C) install, test, or sell motor fuel containers and systems or mobile fuel containers and systems;

(D) install transport systems; or

(E) repair transport systems, motor fuel systems, or mobile fuel systems.

Added by Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 2, eff. September 1, 2019.

Sec. 113.081. LICENSE REQUIREMENT. (a) Unless otherwise stated in this chapter, a person may not engage in any of the following activities unless that person has obtained a license from the commission authorizing that activity:

(1) container activities: the assembly, repair, testing, sale, installation, or subframing of containers for use in this state, except that a license is not required for the sale of a new container of 96 pounds water capacity or less;

(2) systems activities: the installation, service, and repair of systems for use in this state, including the laying or connecting of pipes and fittings connecting with or to systems or serving a system and appliances to be used with LP-gas as a fuel;

(3) appliance activities: the service, installation, and repair of appliances used or to be used in this state in connection with systems using LP-gas as a fuel, except that a license is not required for installation or connection of manufactured unvented appliances to LP-gas systems by means of LP-gas appliance connectors, or where only duct or electrical work is performed to or on an LP-gas appliance; or

(4) product activities: the sale, transportation, dispensation, or storage of LP-gas in this state, except that a license is not required to sell LP-gas where the vendor never obtains

possessory rights to the product sold or where the product is transported or stored by the ultimate consumer for personal consumption only.

(b) The licensing requirements of Subsection (a) apply to a person other than a political subdivision who installs or services a motor fuel system or mobile fuel system on a motor vehicle used in the transportation of the general public. Subsections (a)(1) and (a)(2) do not apply to intermodal containers or intermodal portable tanks constructed in accordance with United States Department of Transportation specifications.

(c) The licensing requirements of Subsection (a) do not apply to a mobile home park operator who does not obtain any possessory rights to LP-gas products, and utilizes only LP-gas licensees in the installation and maintenance of the LP-gas containers and system. For purposes of this subsection, the term "mobile home park operator" means an individual or business entity owning or operating a place, divided into sites, at which the primary business is the rental or leasing of the sites to persons for use in occupying mobile homes as dwellings. "Mobile home" has the meaning set out in Chapter 1201, Occupations Code.

(d) The commission by rule may exempt journeymen or master plumbers licensed by the Texas State Board of Plumbing Examiners from the license requirements of Subsection (a).

(e) The commission by rule may exempt a person licensed under Chapter 1302, Occupations Code, from the license requirements of Subsection (a).

(f) No license is required by an original manufacturer of a new motor vehicle powered by LPG or subcontractor of such a manufacturer who produces a new LPG-powered vehicle for the manufacturer.

(g) The commission by rule may establish reasonable conditions for licensing and exemptions from license requirements for a state agency or institution, county, municipality, school district, or other governmental subdivision.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 5428, ch. 1011, Sec. 1, eff. Aug. 29, 1983; Acts 1985, 69th Leg., ch. 911, Sec. 1, eff. Aug. 26, 1985; Acts 1989, 71st Leg., ch. 533, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 4, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 3, eff. Sept. 1, 1993; Acts 1995, 74th

Leg., ch. 239, Sec. 2, eff. Sept. 1, 1995; Acts 2003, 78th Leg., ch. 1276, Sec. 14A.797, eff. Sept. 1, 2003.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 3, eff. September 1, 2019.

Sec. 113.0815. REGISTRATION OF CONTAINER MANUFACTURERS AND FABRICATORS. (a) A person may not engage in the manufacture or fabrication of containers for use in this state unless the person registers with the commission in accordance with rules adopted by the commission.

(b) A registration under this section must be renewed annually.

Added by Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 4, eff. September 1, 2019.

Sec. 113.082. CATEGORIES OF LP-GAS ACTIVITIES; FEES. (a) The commission by rule shall establish license categories for LP-gas activities.

(b) The commission by rule shall establish reasonable application and original license fees and renewal fees for each type of license category established under Subsection (a).

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 2, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 2, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 5, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 3, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 66, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1260, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 35, eff. Sept. 1, 2001.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 5, eff. September 1, 2019.

Sec. 113.083. LIQUEFIED PETROLEUM GAS EMERGENCY. (a) In the

event of a temporary statewide, regional, or local shortage of liquid petroleum gas in this state or another state, as determined under Subsection (b) of this section, LP gas trucks and operators meeting all certification, permitting, and licensing requirements of the federal government and another state whose governor has declared an LP gas emergency may transport LP gas in this state without having first obtained any license, permit, or certification ordinarily required under state law.

(b) The governor may determine the existence of a temporary statewide, regional, or local shortage of LP gas in this state or another state and on such a determination, the governor may join with the governor of any other state in declaring an LP gas emergency.

(c) The waiver of Texas licensing, permitting, and certification requirements regarding LP gas trucks and operators is valid only during the time of the emergency. An LP gas emergency may not continue for more than 14 days unless renewed by the governor.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 9, Sec. 1, eff. Aug. 29, 1991.

Sec. 113.084. APPLICATION. (a) An application for a license shall be submitted to the commission on forms furnished by the commission or on a facsimile of those forms.

(b) A prospective licensee shall submit the required application together with the original nonrefundable license fee established by the commission under Section 113.082 for each type of license category for which an application is made. The applicant shall submit additional information and data with each application as the commission may reasonably require.

(c) A licensee shall submit the nonrefundable renewal fee for each type of license sought along with information and data the commission may reasonably require.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 36, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 6, eff. September 1, 2019.

Sec. 113.087. COURSE OF INSTRUCTION, EXAMINATION, AND SEMINAR REQUIREMENTS. (a) The satisfactory completion of the requirements of this section is mandatory, and operations requiring an LP-gas license may not commence, continue, or resume unless examination and seminar requirements are fulfilled. The commission shall prepare, administer, and grade or review an examination required by this section or contract with a testing service to prepare, administer, and grade or review the examination.

(b) Before license issuance, the commission shall require the individual designated as the licensee's representative to the commission to provide good and sufficient proof through examination of working knowledge of this chapter and rules of the commission which affect the type of license for which application is made. Thereafter, each licensee shall maintain a qualified representative at all times.

(c) An individual who will be actively supervising operations that require a license under this chapter, other than a portable cylinder exchange service, at any outlet or location, shall be required to provide good and sufficient proof through examination that the supervisor has a working knowledge of the safety requirements and penalties in this chapter and the rules of the commission which apply to that type of license. A licensee who provides portable cylinders to a licensee operating a portable cylinder exchange service shall:

(1) prepare or obtain a manual approved by the commission covering the proper procedures for handling LP-gas in the portable cylinder exchange process;

(2) provide a copy of the manual to each outlet or location of the licensee operating the portable cylinder exchange service; and

(3) provide training approved by the commission regarding the contents of the manual to each individual who will be actively supervising operation of the portable cylinder exchange service at each outlet or location.

(d) As determined by commission rule, each individual who is or will be utilized by a licensee or a public employee of the state, the federal government, or a state or federal subdivision in LPG-related activities shall be required to provide good and sufficient proof through examination that the employee has a working knowledge of the safety requirements in the rules of the commission relating to the activity or activities. Should the commission determine that an

individual has a history of failure to comply with the requirements of this code or with the rules of the commission, the commission shall promptly notify the individual in writing of failure to qualify for LP-gas employee certification and the reasons therefor. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091.

(e) No licensee may employ or otherwise utilize any person as a representative to the commission, nor as a supervisor or employee in LPG-related activities, unless and until the person has qualified by satisfactory completion of the examination or training requirements, as applicable, established by this section.

(f) The commission shall promulgate rules relating to changes in representatives, supervisors, and employees, and may permit temporary exemption from the examination or training requirements, as applicable, for a maximum period of 45 days.

(g) In no event shall an original or renewal license be issued to an applicant whose listed representative has not maintained qualified status, as defined by rule, or to any person who has a history of failure to comply with the requirements of this code or with the rules of the commission. The commission shall have written notification of license denial and the reasons therefor prepared promptly and provided to both the representative and the license applicant. Written notice by the commission, a written request for a hearing, and the public hearing itself shall be governed by Section 113.091.

(h) Satisfactory completion of any required examination or training under this section shall accrue to the individual.

(i) Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify the person of the results of the examination.

(j) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(k) The commission may require a testing service to notify a

person of the results of the person's examination.

(l) If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(m) The commission by rule may require, in addition to examination requirements as set out in Subsections (b), (c), and (d):

(1) an examination for technical competence that is validated by a recognized educational testing organization or similar organization; or

(2) attendance at approved academic, trade, professional, or commission-sponsored seminars or other continuing education programs.

(n) Prior to qualifying an individual to perform LP-gas work, the commission may establish by rule an initial course of instruction for any person who has not yet passed the examination for the LPG activity for which the person seeks qualification; for any person who has not maintained qualified status, as defined by rule; and for any person whose certification has been revoked pursuant to Subchapter F of this code. If an initial course of instruction is established by the commission, it shall be available at least once every 180 days.

(o) The commission by rule may exempt from any provision of this section:

(1) a journeyman or master plumber licensed by the Texas State Board of Plumbing Examiners;

(2) a person licensed under Chapter 1302, Occupations Code; or

(3) company representatives, operations supervisors, or employees of a testing laboratory that was registered under Section 113.135 prior to the effective date of this subsection.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 3, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 3, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 6, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 239, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 611, Sec. 2, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 37, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276,

Sec. 14A.798, eff. Sept. 1, 2003.
Amended by:
Acts 2005, 79th Leg., Ch. 999 (H.B. 473), Sec. 1, eff. September 1, 2005.
Acts 2017, 85th Leg., R.S., Ch. 1095 (H.B. 3726), Sec. 1, eff. September 1, 2017.
Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 7, eff. September 1, 2019.

Sec. 113.088. EXAMINATION; SEMINAR FEES. (a) The commission shall establish reasonable examination, course of instruction, and seminar registration fees.

(b) Before seminar attendance or examination of any person, except as provided by this subsection or Subsection (c), the commission shall receive a nonrefundable fee for each examination or seminar registration. If the examination is administered by a testing service, the testing service may administer the examination before the commission receives the fee. A testing service that administers an examination shall collect a nonrefundable fee for the examination before the examination is administered and shall forward the fee to the commission not later than the fifth business day after the date the testing service receives the fee.

(c) The commission may exempt voluntary firemen, or public employees of the State of Texas, federal government, or state or federal subdivisions from the examination fee, the examination renewal fee, and seminar fees.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 4, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 4, eff. Sept. 1, 1989.
Amended by:
Acts 2005, 79th Leg., Ch. 999 (H.B. 473), Sec. 2, eff. September 1, 2005.

Sec. 113.089. SPECIAL REQUIREMENTS FOR LICENSING. (a) If application is made for a license by a retail and wholesale dealer or for any other type of license specified by commission rule, the commission, in addition to other requirements, shall have an actual

inspection conducted of any and all facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices. The inspection may be waived by the commission on an application resulting solely from a change in legal entities under which a current licensee operates.

(b) The inspection, if required, shall be performed before the issuance of the license, but in no event later than 15 days after the inspection is requested in writing by the applicant for license.

(c) A license for which an inspection under Subsection (a) is required may not be issued until the inspection verifies the applicant to be in satisfactory compliance with all current safety laws, rules, and practices.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1991, 72nd Leg., ch. 725, Sec. 7, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 38, eff. Sept. 1, 2001.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 8, eff. September 1, 2019.

Sec. 113.090. FILING AND REGISTRATION FEES. (a) The commission by rule may establish reasonable fees for the review of site applications related to the installation of containers when site applications are reviewed by the commission before such installation is placed into LP-gas service.

(b) The commission by rule may establish reasonable fees for recording the location of containers at public buildings and commercial installations when prior approval of site applications is not required.

(c) The commission by rule may establish reasonable fees for any registration required under this code.

Added by Acts 1987, 70th Leg., ch. 325, Sec. 5, eff. June 11, 1987.
Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 39, eff. Sept. 1, 2001.

Sec. 113.091. LICENSE DENIAL. (a) If an applicant fails to meet the requirements for original or renewal licensing set out in

this chapter, the commission shall promptly send notice to the applicant specifying the reason for the applicant's failure to qualify for license and advising the applicant of the right to request a hearing.

(b) Within 30 days of the notice of denial, an applicant for license under this chapter who is denied a license may request a hearing to determine whether or not the applicant has complied in all respects with the licensing procedure applicable to each type of license sought. The applicant's request for hearing must be in writing and delivered to the commission.

(c) A hearing to determine an applicant's compliance with the licensing procedure applicable to each type of license sought must be scheduled within 30 days following receipt of a request under Subsection (b) of this section.

(d) If the record made at the hearing supports the applicant's claim, the commission shall enter an order in its records to that effect, noting each type of license to which the applicant is found entitled, and the commission shall have the license or licenses issued. If the applicant is found unqualified, the commission shall likewise enter an order in its records to that effect, and no license may be issued to the applicant.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 40, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 9, eff. September 1, 2019.

Sec. 113.092. LICENSE ISSUANCE. (a) The commission shall issue the appropriate license to an applicant who has satisfied the licensing procedures and requirements set out in this chapter and in the rules of the commission, except as otherwise provided for in Section 113.163.

(b) The license shall be issued in the name under which the applicant proposes to conduct business.

(c) The license shall belong to the applicant to which it is issued and shall be nontransferable.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept.

1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 6, eff. June 11, 1987.
Amended by:

Acts 2005, 79th Leg., Ch. 609 (H.B. 2172), Sec. 1, eff. September 1, 2005.

Sec. 113.093. LICENSE RENEWAL. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

(e) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f) Not later than the 30th day before the date a person's license is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

(g) A renewal license will be issued to a licensee as soon as is practicable after compliance with this section, and fulfillment of insurance, examination, and seminar requirements established by this chapter, and submission of any information and data the commission may reasonably require.

(h) Renewal fees shall be nonrefundable.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept.

1, 1980; Acts 1983, 68th Leg., p. 1168, ch. 263, Sec. 7, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 1016, Sec. 5, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 41, eff. Sept. 1, 2001.

Sec. 113.094. STAGGERED RENEWAL OF LICENSES. The commission, by rule, may adopt a system under which licenses expire on various dates during the year. For the year in which the license expiration date is changed, license fees payable on a specified date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

Added by Acts 1983, 68th Leg., p. 1174, ch. 263, Sec. 8, eff. Sept. 1, 1983.

Sec. 113.095. LICENSE AND EXAMINATION BY ENDORSEMENT. (a) The commission may waive any license requirement for an applicant with a valid license from another state having license requirements substantially equivalent to those of this state.

(b) The commission by rule may waive the requirements of Section 113.087 for an applicant holding a valid examination certificate issued by another state having certification requirements substantially equivalent to those of this state.

Added by Acts 1983, 68th Leg., p. 1174, ch. 263, Sec. 8, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 239, Sec. 5, eff. Sept. 1, 1995.

Sec. 113.096. PROVISIONAL LICENSE. (a) The commission may issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who:

(1) has been licensed in good standing for at least two years in another jurisdiction, including a foreign country, that has licensing requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this

chapter; and

(3) is sponsored by a person licensed by the commission under this chapter with whom the provisional license holder will practice during the time the person holds a provisional license.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. The commission shall issue a license under this chapter to the provisional license holder if:

(1) the provisional license holder is eligible to be licensed under Section 113.095; or

(2) the provisional license holder:

(A) passes the part of the examination under Section 113.087 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license under this chapter; and

(C) satisfies any other licensing requirements under this chapter.

(d) The commission must approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 42, eff. Sept. 1, 2001.

Sec. 113.097. INSURANCE REQUIREMENT. (a) The commission shall not issue a license authorizing LP-gas activities or renew an existing license unless the applicant for license or license renewal provides proof of required insurance coverage with an insurance carrier authorized to do business in this state as evidenced by a certificate of authority having been issued to the carrier by the

Texas Department of Insurance or, if the applicant is unable to obtain coverage from such a carrier, provides, on approval of the commission, proof of required insurance coverage issued by a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter.

(b) A licensee may not perform an LP-gas activity licensed by the commission unless the insurance coverage required by this chapter is in effect.

(c) Except as provided in Section 113.099, the types and amounts of insurance provided in Subsections (d) through (i) are required while engaged in an LP-gas activity licensed by the commission or any activity incidental thereto.

(d) A person licensed to transport LP-gas must carry motor vehicle bodily injury and property damage liability coverage on each motor vehicle, including trailers and semitrailers, used to transport LP-gas. The commission shall establish by rule a reasonable amount of coverage to be maintained, except that coverage may not be less than the amounts required as evidence of financial responsibility under Chapter 601, Transportation Code.

(e) All licensees must carry general liability coverage in a reasonable amount, based on the type or types of licensed activities, which shall be established by commission rule.

(f) A licensee, other than a licensee operating a portable cylinder exchange service, must acquire and maintain appropriate workers' compensation or coverage for its employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits, from an insurance carrier authorized to provide coverage in this state, in the amounts required by the commission.

(g) Notwithstanding Subsection (f) of this section, a state agency or institution, county, municipality, school district, or other governmental subdivision may submit appropriate evidence of workers' compensation coverage by self-insurance if permitted by the state workers' compensation act. The commission may require forms of evidence of coverage for this purpose other than that required under Section 113.098 of this code.

(h) As required by commission rule, a person registered under Section 113.0815 or licensed as a transport outfitter, carrier, retail and wholesale dealer, or testing laboratory must carry

completed operations or products liability insurance, or both, in a reasonable amount, based on the type or types of registered or licensed activities.

(i) The commission by rule may exempt or provide reasonable alternatives to the insurance requirements set forth in Subsections (a) through (e) and (h) of this section for a state agency or institution, county, municipality, school district, or other governmental subdivision.

(j) The commission by rule may exempt from the insurance requirements of this section or adopt a reasonable alternative to those requirements for:

(1) a master or journeyman plumber licensed by the Texas State Board of Plumbing Examiners; or

(2) a person licensed under Chapter 1302, Occupations Code.

(k) The commission by rule may allow a licensee to self-insure under Subsection (d), (e), or (f) and by rule shall establish standards for that self-insurance.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 7, eff. June 11, 1987; Acts 1987, 70th Leg., ch. 1050, Sec. 2, eff. June 19, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 5, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 14.01, eff. Aug. 26, 1991; Acts 1991, 72nd Leg., ch. 725, Sec. 8, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 6, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 66, Sec. 4, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 165, Sec. 30.229, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 611, Sec. 3, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 43, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.538, 14A.799, eff. Sept. 1, 2003.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 10, eff. September 1, 2019.

Sec. 113.098. INSURANCE CONDITIONS. (a) As evidence that required insurance has been secured and is in force, certificates of insurance which are approved by the commission shall be filed with the commission before licensing, license renewal, and during the

entire period that the license is in effect. Any document filed with the commission in a timely manner which is not completed in accordance with the instructions indicated on the insurance certificate forms supplied by the commission, but which complies with the substantive requirements of this section and with the rules adopted under this section may be considered by the commission to be evidence that required insurance has been secured and is in force for a temporary period not to exceed 45 days. During this temporary period, a licensee shall file with the commission an amended certificate of insurance which complies with all procedural and substantive requirements of this section and the rules adopted hereunder.

(b) All certificates filed under this section shall be continuous in duration.

(c) Cancellation of a certificate of insurance becomes effective on the occurrence of any of the following events and not before:

(1) commission receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time equivalent to the notice period required by law to be given the insured before the insurance cancellation;

(2) receipt by the commission of an acceptable replacement insurance certificate;

(3) voluntary surrender of a license and the rights and privileges conferred by the license;

(4) commission receipt of a statement made by a licensee stating that the licensee is not actively engaging in any operations which require a particular type of insurance and will not engage in those operations unless and until all certificates of required insurance applicable to those operations are filed with the commission; or

(5) written order of commission.

(d) Cancellation under Subsection (c) of this section shall not become effective until approved by the commission.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 8, eff. June 11, 1987; Acts 1991, 72nd Leg., ch. 725, Sec. 9, eff. Aug. 26, 1991; Acts 2001, 77th Leg., ch. 1233, Sec. 44, eff. Sept. 1, 2001.

Sec. 113.099. STATEMENTS IN LIEU OF INSURANCE CERTIFICATES. (a) A person licensed to transport LP-gas that does not operate or contemplate the operation of a motor vehicle equipped with an LP-gas cargo container and does not transport or contemplate the transportation of LP-gas by vehicle in any manner, may make and file with the commission a statement to that effect in lieu of filing a certificate of motor vehicle bodily injury and property damage insurance.

(b) A licensee or an applicant for a license that does not engage in or contemplate engaging in any operations which would be covered by general liability insurance for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of general liability insurance.

(c) A licensee or an applicant for a license that does not employ or contemplate the hiring of an employee or employees to be engaged in LPG-related activities in this state may make and file with the commission a statement to that effect in lieu of filing evidence of coverage of workers' compensation or other alternative form of coverage as provided in this subchapter.

(d) A person registered under Section 113.0815 or licensed as a transport outfitter, carrier, retail and wholesale dealer, or testing laboratory that does not engage in or contemplate engaging in any LP-gas operations which would be covered by completed operations or products liability insurance, or both, for a period of time may make and file with the commission a statement to that effect in lieu of filing a certificate of insurance.

(e) Any statement filed pursuant to Subsections (a) through (d) of this section must further state that the licensee or applicant agrees to file a certificate of insurance evidencing appropriate coverage before engaging in any activities that require insurance coverage under this subchapter.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1989, 71st Leg., ch. 533, Sec. 6, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 10, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 7, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 239, Sec. 7, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 1233, Sec. 45, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 56 (H.B. 2714), Sec. 11, eff.

September 1, 2019.

SUBCHAPTER E. MOTOR VEHICLES AND TESTING LABORATORIES

Sec. 113.131. TRANSPORT TRUCKS AND TRAILERS. (a) Each transport truck, trailer, or other motor vehicle equipped with an LPG cargo container and each truck used principally for transporting LPG in portable containers shall be registered with the commission.

(b) A licensee who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the name or names under which the licensee conducts business before the transportation of LPG by means of that unit.

(c) An ultimate consumer of LPG who has purchased, leased, or obtained other rights to use any unit described in Subsection (a) of this section shall register that unit in the person's name before the transportation of LPG by means of that unit on public roads or highways.

(d) The commission, by rule, shall establish reasonable, nonrefundable annual registration and transfer fees for each LP-gas cargo trailer, semitrailer, bobtail, and cylinder-delivery unit registered or transferred as follows:

(1) the annual registration fee established by the commission shall not be less than $100 nor more than $300.

(2) the annual transfer fee established by the commission shall not be less than $25 nor more than $100.

(e) Any unit registered pursuant to this section shall be covered by motor vehicle bodily injury and property damage liability insurance as prescribed by Section 113.097 of this code.

(f) Any delivery or transport driver shall meet the applicable examination and seminar requirements set out in Section 113.087 of this code.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 9, eff. June 11, 1987; Acts 1989, 71st Leg., ch. 533, Sec. 7, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 725, Sec. 11, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 1016, Sec. 8, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 5, eff. Sept. 1, 1997.

Sec. 113.133. MOTOR CARRIER LAWS. No provision of this chapter shall be construed to modify, amend, or revoke any motor carrier law of this state.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.134. DEPARTMENT OF PUBLIC SAFETY. The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules promulgated under this chapter to the extent that they are applicable to motor vehicles.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER F. LICENSE AND REGISTRATION FOR AN EXEMPTION: DENIAL AND DISCIPLINARY ACTION

Sec. 113.161. VIOLATIONS OF CHAPTER OR RULES; INFORMAL ACTIONS. (a) The commission shall notify a licensee or registrant in writing when it finds probable violation or noncompliance with this chapter or the safety rules promulgated under this chapter.

(b) The notification shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if deemed necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing shall be conducted as provided in Section 113.162 of this code.

(e) If the commission determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing as

provided in Section 113.162.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 2001, 77th Leg., ch. 1233, Sec. 47, eff. Sept. 1, 2001.

Sec. 113.162. HEARINGS. Any hearing or proceeding under this chapter shall be subject to the provisions of the Administrative Procedure and Texas Register Act.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.163. DENIAL, REFUSAL TO RENEW, OR REVOCATION OF LICENSE OR REGISTRATION FOR AN EXEMPTION IN EVENT OF VIOLATION. (a) Except as provided by Subsections (d) and (f), the commission may not approve an application for a license under this chapter or approve a registration for an exemption under Section 113.081(d) or (e) if:

(1) the applicant or registrant for an exemption has violated a statute or commission rule, order, license, permit, or certificate that relates to safety; or

(2) a person who holds a position of ownership or control in the applicant or registrant for an exemption has held a position of ownership or control in another person during the seven years preceding the date on which the application or registration for an exemption is filed and during that period of ownership or control the other person violated a statute or commission rule, order, license, permit, or certificate that relates to safety.

(b) An applicant, registrant for an exemption, or other person has committed a violation described by Subsection (a) if:

(1) a final judgment or final administrative order finding the violation has been entered against the applicant, registrant for an exemption, or other person and all appeals have been exhausted; or

(2) the commission and the applicant, registrant for an exemption, or other person have entered into an agreed order relating to the alleged violation.

(c) Regardless of whether the person's name appears or is required to appear on an application or registration for an exemption, a person holds a position of ownership or control in an

applicant, registrant for an exemption, or other person if:

(1) the person is:

(A) an officer or director of the applicant, registrant for an exemption, or other person;

(B) a general partner of the applicant, registrant for an exemption, or other person;

(C) the owner of a sole proprietorship applicant, registrant for an exemption, or other person;

(D) the owner of at least 25 percent of the beneficial interest in the applicant, registrant for an exemption, or other person; or

(E) a trustee of the applicant, registrant for an exemption, or other person; or

(2) the applicant, registrant for an exemption, or other person has been determined by a final judgment or final administrative order to have exerted actual control over the applicant, registrant for an exemption, or other person.

(d) The commission shall approve an application for a license under this chapter or for a registration for an exemption under Section 113.081(d) or (e) if:

(1) the conditions that constituted the violation are corrected or are being corrected in accordance with a schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed;

(2) all administrative, civil, and criminal penalties are paid or are being paid in accordance with a payment schedule to which the commission and the applicant, registrant for an exemption, or other person have agreed; and

(3) the application or registration for an exemption is in compliance with all other requirements of law and commission rules.

(e) If an application or registration for an exemption is denied under this section, the commission shall provide the applicant or registrant for an exemption with a written statement explaining the reason for the denial.

(f) Notwithstanding Subsection (a), the commission may issue a license to an applicant described by Subsection (a) or approve a registration for an exemption for a registrant for an exemption described by that subsection for a term specified by the commission if the license or registration for an exemption is necessary to remedy a violation of law or commission rules.

(g) A fee tendered in connection with an application or registration for an exemption that is denied under this section is nonrefundable.

(h) If the commission is prohibited by Subsection (a) from approving an application for a license or a registration for an exemption or would be prohibited from doing so by that subsection if the applicant, licensee, or registrant for an exemption submitted an application or registration for an exemption, the commission, after notice and opportunity for a hearing, by order may refuse to renew or may revoke a license or registration for an exemption issued to the applicant, licensee, or registrant for an exemption under this chapter. The commission may not revoke or refuse to renew a license or registration for an exemption under this subsection if the commission finds that the applicant, licensee, or registrant for an exemption has fulfilled the conditions set out in Subsection (d).

(i) An order issued under Subsection (h) must provide the applicant, licensee, or registrant for an exemption a reasonable period to comply with the judgment or order finding the violation before the order takes effect.

(j) On refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h), the person may not perform any activities under the jurisdiction of the commission under this chapter, except as necessary to remedy a violation of law or commission rules and as authorized by the commission under a license or registration for an exemption issued under Subsection (f).

(k) In determining whether to refuse to renew or to revoke a person's license or registration for an exemption under Subsection (h), the commission shall consider the person's history of previous violations, the seriousness of previous violations, any hazard to the health or safety of the public, and the demonstrated good faith of the person.

(l) Refusal to renew or revocation of a person's license or registration for an exemption under Subsection (h) does not relieve the person of any existing or future duty under law, rules, or license or registration conditions.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 1167, ch. 263, Sec. 5, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 11, eff. June 11, 1987; Acts 2001, 77th Leg., ch. 1233, Sec. 48, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 609 (H.B. 2172), Sec. 3, eff. September 1, 2005.

Sec. 113.164. APPEAL. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER G. FEES AND FUNDS

Sec. 113.201. DEPOSIT AND EXPENDITURE OF FEES AND FUNDS. Money received by the commission under this chapter shall be deposited in the state treasury to the credit of the General Revenue Fund and spent in accordance with the appropriations made by law.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1981, 67th Leg., p. 144, ch. 65, Sec. 2, eff. Sept. 1, 1981.

SUBCHAPTER H. ENFORCEMENT

Sec. 113.231. INJUNCTIONS. (a) On request of the commission, the attorney general may bring an action in the name and on behalf of the state to enjoin a person from committing any act that violates or does not comply with any provision of this chapter or of any rule promulgated under this chapter.

(b) A suit for injunction instituted pursuant to Subsection (a) of this section shall be in addition to any other remedies at law or in equity.

(c) A district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under Subsection (a) of this section.

(d) No bond for injunction may be required of the commission or the attorney general in relation to a proceeding instituted pursuant to Subsection (a) of this section.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

Sec. 113.232. GENERAL PENALTY. (a) In addition to injunctive relief and other penalties provided in this chapter, a person who knowingly violates or fails to comply with this chapter or rules adopted under this chapter is guilty of a Class C misdemeanor and is punishable by a fine of not less than $100 nor more than the maximum fine as set out in Section 12.23 of the Penal Code.

(b) A person previously convicted under Subsection (a) of this section who knowingly violates or fails to comply with this chapter is guilty of a Class A misdemeanor punishable by a fine of not less than the maximum fine allowed by law for a Class C misdemeanor, nor more than the maximum fine as set out in Section 12.21 of the Penal Code.

(c) A penalty prescribed by this section is in addition to injunctive relief and other penalties provided by this chapter.

(d) Each day the violation or failure to comply continues constitutes a separate offense.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1983, 68th Leg., p. 5429, ch. 1011, Sec. 2, eff. Aug. 29, 1983; Acts 1987, 70th Leg., ch. 325, Sec. 12, eff. June 11, 1987.

Sec. 113.233. ENTRY FOR INSPECTION AND INVESTIGATION. (a) An inspector, employee, or agent of the commission may enter the premises of a licensee under this chapter or any building or other premises open to the public at any reasonable time for the purpose of determining and verifying compliance with this chapter and the safety rules of the commission. This same authority shall extend to private property with the permission of the owner of such private property or an authorized agent of the owner.

(b) Any authorized representative of the commission may enter any buildings or premises where an accident has occurred in which LP-gas was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The commission may request that any state or local authority having jurisdiction take

appropriate action, to the extent permitted by law, as may be necessary for preservation of property and premises.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1985, 69th Leg., ch. 911, Sec. 2, eff. Aug. 26, 1985; Acts 2001, 77th Leg., ch. 1233, Sec. 49, eff. Sept. 1, 2001.

Sec. 113.234. WARNING TAG. An inspector, employee, or agent of the commission may declare any container, appliance, equipment, transport, system, or LP-gas operation that does not conform to the safety requirements of this chapter or rules adopted under this chapter, or which is otherwise defective, as unsafe or dangerous for LP-gas service and shall attach a warning tag in a conspicuous location.

Amended by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980; Acts 1987, 70th Leg., ch. 325, Sec. 13, eff. June 11, 1987.

Sec. 113.235. SUPPLYING OR REMOVING LPG AFTER WARNING TAG ATTACHED. (a) Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, appliance, transport, or system to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

(b) LP-gas shall be removed from a container to which a warning tag is attached only under the direction of the commission.

(c) In an emergency situation and for immediate need, the commission may allow a reasonable amount of LP-gas to be introduced into a container or may allow an LP-gas system or an LP-gas appliance to be placed into LP-gas service, for a reasonable time period provided the reasons for the warning tag have been eliminated.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980. Amended by Acts 1991, 72nd Leg., ch. 725, Sec. 13, eff. Aug. 26, 1991.

Sec. 113.236. PENALTY FOR UNAUTHORIZED REMOVAL OF TAG. An unauthorized person who knowingly removes, destroys, or in any way

obliterates a warning tag attached to a container, appliance, transport, or system is guilty of a misdemeanor and on conviction is punishable by a fine of not less than $50 and not more than $2,000.

Added by Acts 1979, 66th Leg., p. 2031, ch. 799, Sec. 1, eff. Sept. 1, 1980.

SUBCHAPTER K. LIABILITY OF LICENSE HOLDER

Sec. 113.301. LIMITATION OF LIABILITY OF LICENSED INSTALLER OR SERVICER. A person is not liable for damages caused solely by a malfunction or the installation, modification, or improper operation of an LPG system that the person delivered for installation, installed, or serviced in a residential, commercial, or public building or in a motor vehicle if:

(1) the person was licensed by the commission to perform the installation or service or was a registrant;

(2) the delivery, installation, or service was performed in compliance with the safety rules and standards adopted by the commission;

(3) the person has no control over the operation or use of the LPG system;

(4) the person was not negligent; and

(5) the person did not supply a defective product which was a producing cause of harm.

Added by Acts 1993, 73rd Leg., ch. 80, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 300, Sec. 1, eff. May 26, 1997. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 462 (H.B. 1170), Sec. 2, eff. June 16, 2007.

SUBCHAPTER L. TESTING OF LP-GAS SYSTEMS IN SCHOOL FACILITIES

Sec. 113.351. DEFINITIONS. In this subchapter:

(1) "School district" means:

(A) an entity created under the laws of this state and accredited by the Texas Education Agency under Subchapter D, Chapter 39, Education Code;

(B) a private elementary or secondary school, other than a school in a residence; or

(C) a state or regional school for the blind and visually impaired or the deaf under Chapter 30, Education Code.

(2) "Supplier" means an individual or company that sells and delivers liquefied petroleum gas to a school district facility. If more than one individual or company sells and delivers LP-gas to a facility of a school district, each individual or company is a supplier for purposes of this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.352. DUTY TO TEST FOR LEAKAGE. (a) Each school district shall perform leakage tests for leakage on the LP-gas piping system in each school district facility at least biennially. The tests must be performed before the beginning of the school year.

(b) The school district may perform the leakage tests on a two-year cycle under which the tests are performed for the LP-gas piping systems of approximately one-half of the facilities each year.

(c) If a school district operates one or more school district facilities on a year-round calendar, the leakage test in each of those facilities must be conducted and reported not later than July 1 of the year in which the test is performed.

(d) A test performed under a municipal code satisfies the pressure testing requirements prescribed by this section.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 1, eff. June 19, 2009.

Sec. 113.353. REQUIREMENTS OF TEST. (a) The school district shall perform the leakage test to determine whether the LP-gas piping system holds at least the amount of pressure specified by the commission.

(b) The leakage test must be conducted in accordance with commission rules.

(c) At the request of a school district, the commission shall assist the district in providing for the certification of an employee of the school district or school, as applicable, to conduct the test and in developing a procedure for conducting the test.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 2, eff. June 19, 2009.

Sec. 113.354. NOTICE OF TEST. (a) A school district shall retain documentation specifying the date and the result of each leakage test or other inspection of each LP-gas piping system until at least the fifth anniversary of the date the test or other inspection was performed.

(b) Before the introduction of any LP-gas into the LP-gas piping system, the school district shall provide verification to the district's supplier that the piping has been tested in accordance with this subchapter.

(c) The commission may review a school district's documentation of each leakage test or other inspection conducted by the school district.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 995 (H.B. 3918), Sec. 3, eff. June 19, 2009.

Sec. 113.355. TERMINATION OF SERVICE. A supplier shall terminate service to a school district facility if:

(1) the supplier receives official notification from the firm or individual conducting the test of a hazardous leakage in the facility LP-gas piping system; or

(2) a test at the facility is not performed as required by this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.356. REPORT TO BOARD OF TRUSTEES. An identified LP-gas leakage in a school district facility shall be reported to the board of trustees of the district in which the facility is located.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

Sec. 113.357. ENFORCEMENT. The commission shall enforce this subchapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 53, eff. Sept. 1, 2001.

SUBCHAPTER M. CONSUMER SAFETY NOTIFICATION

Sec. 113.401. NOTICE REQUIRED. (a) A person holding a license to install or repair an LPG system who sells, installs, or repairs an LPG system, piping or other equipment that is part of a system, or an appliance that is connected or attached to a system shall provide the following notice to the purchaser or owner of the system, piping or other equipment, or appliance:

WARNING: Flammable Gas. The installation, modification, or repair of an LPG system by a person who is not licensed or registered to install, modify, or repair an LPG system may cause injury, harm, or loss. Contact a person licensed or registered to install, modify, or repair an LPG system. A person licensed to install or repair an LPG system may not be liable for damages caused by the modification of an LPG system by an unlicensed person except as otherwise provided by applicable law.

(b) The commission shall adopt rules relating to the notice required by Subsection (a).

Added by Acts 2007, 80th Leg., R.S., Ch. 462 (H.B. 1170), Sec. 1, eff. September 1, 2007.

CHAPTER 114. OIL TANKER VEHICLES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 114.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Liquid hydrocarbons" means unrefined oil or condensate, and refined oil or condensate to be blended with unrefined liquid hydrocarbons.

(3) "Transporter" means each gatherer, storer, or other handler of liquid hydrocarbons who moves or transports those liquid hydrocarbons by truck or other motor vehicle.

(4) "Oil tanker vehicle" means a motor vehicle licensed for

highway use on a public highway or used on a public highway:

(A) that is equipped with, carrying, pulling, or otherwise transporting an assembly, compartment, tank, or other container that is used for transporting, hauling, or delivering liquids; and

(B) that is being used to transport liquid hydrocarbons on a public highway.

(5) "Public highway" means a way or place of whatever nature open to the use of the public as a matter of right for the purpose of vehicular travel, even if the way or place is temporarily closed for the purpose of construction, maintenance, or repair.

(6) "Lease" means a well producing oil, gas, or oil and gas, and any group of contiguous wells producing oil, gas, or oil and gas of any number operated as a producing unit.

(7) "Facility" means any place used to store, process, refine, reclaim, dispose of, or treat liquid hydrocarbons.

(8) "Cargo manifest" means one or more documents that together contain the information required by Section 114.012 of this code.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.002. APPLICABILITY OF CHAPTER. This chapter does not apply to:

(1) a common carrier as defined by and regulated under Chapter 111 of the Natural Resources Code; or

(2) the movement by a person or entity by motor vehicle of salt water, brine, sludge, drilling mud, and other liquid or semiliquid material arising out of or incidental to drilling for or producing oil or gas if:

(A) the commission has authorized the person or entity to move or transport the material and the material being moved or transported contains less than seven percent liquid hydrocarbons by volume; or

(B) the person or entity is not moving or transporting the material for hire and the material being moved or transported contains less than seven percent liquid hydrocarbons by volume.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept.

1, 1983.

SUBCHAPTER B. CARGO MANIFEST

Sec. 114.011. CARGO MANIFEST REQUIRED. A cargo manifest must be carried in each oil tanker vehicle transporting liquid hydrocarbons on a public highway in this state and must be presented on request for inspection as provided by Section 114.101 of this code.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.012. CONTENTS OF CARGO MANIFEST. For each load of liquid hydrocarbons loaded onto and transported by an oil tanker vehicle, the cargo manifest must include:

(1) an identification of the lease or facility from which the liquid hydrocarbons were removed which must include:

(A) the lease or facility name; and

(B) the name of the operator of the lease or facility;

(2) the total quantity of liquid hydrocarbons removed from the lease or facility and loaded onto the oil tanker vehicle;

(3) the date and hour when the liquid hydrocarbons were removed from the lease or facility and loaded onto the oil tanker vehicle;

(4) the identity of the transporter which must include:

(A) the company or individual transporter's name and address;

(B) the oil tanker vehicle driver's name; and

(C) a unique number for the oil tanker vehicle that for a truck tractor and semitrailer type oil tanker vehicle must include unique vehicle numbers for both truck tractor and semitrailer; and

(5) the intended point of destination for the liquid hydrocarbons, including the name of the receiving facility.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.013. COPY OF CARGO MANIFEST LEFT AT LEASE OR FACILITY.

(a) A copy of the cargo manifest must be left at the lease or facility from which the liquid hydrocarbons were removed or delivered to the lease or facility operator, his agent, or his representative.

(b) The requirements of this section may be met by leaving a separate document at the lease or facility from which the liquid hydrocarbons were removed or delivering to the lease or facility operator a separate document that includes information required under Subdivisions (1)-(3) and Subdivisions (4)(A) and (B), Section 114.012, of this code.

(c) If more than one load of liquid hydrocarbons are removed from a single tank or other container of liquid hydrocarbons within a period of 24 consecutive hours, Subdivisions (2) and (3), Section 114.012, of this code may be met for purposes of this section by a separate document that includes:

(1) the total quantity of liquid hydrocarbons removed;

(2) the date and hour the first load was removed; and

(3) the date and hour the last load was removed.

(d) If the operator of a facility requires that a transporter leave at the facility or deliver to the operator a document other than the transporter's cargo manifest, a transporter may meet the requirements of this section by leaving those specified documents at an agreed location or delivering the document to the operator.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.014. CARGO MANIFEST RECORDS. After the delivery of all liquid hydrocarbons in an oil tanker vehicle is completed, the cargo manifest must be maintained in the records of the transporter for a period of not less than two years from the date the liquid hydrocarbons are removed from the oil tanker vehicle.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

SUBCHAPTER C. ENFORCEMENT

Sec. 114.101. AUTHORITY TO EXAMINE CARGO MANIFESTS. The commission, its designated agents or employees, or a peace officer may examine a cargo manifest, whether it is on an oil tanker vehicle

or in the records of the transporter, under circumstances where the examination is a lawful attempt to determine whether this chapter is being violated.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

Sec. 114.102. CRIMINAL OFFENSES. (a) A person commits an offense if the person knowingly or intentionally:

(1) fails to leave a copy of the cargo manifest or other document as required under Section 114.013 of this code at the lease or facility from which the liquid hydrocarbons were removed or fails to deliver a copy of the cargo manifest or other document as required under Section 114.013 of this code to the operator of the lease or facility, his agent, or his representative;

(2) operates an oil tanker vehicle without a cargo manifest as required by this chapter;

(3) fails to maintain cargo manifest records as required under Section 114.014 of this code; or

(4) forges or falsifies a cargo document or documents required by this chapter or exhibits a cargo document or documents knowing that those documents are forged or falsified.

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

(c) It is an affirmative defense to prosecution under Subdivision (1), (2), or (3), Subsection (a), of this section that the person charged with the offense provides the information required by Section 114.012 of this code.

(d) A penalty imposed for violation of this chapter is in addition to any civil or administrative penalty or sanction authorized by Sections 85.042 and 85.201 of this code or any other provision of law.

Added by Acts 1983, 68th Leg., p. 1230, ch. 263, Sec. 30, eff. Sept. 1, 1983.

CHAPTER 115. REGULATION OF CERTAIN TRANSPORTERS OF OIL OR PETROLEUM PRODUCTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 115.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Commission order" includes a rule or order adopted by the commission under the oil and gas conservation statutes of this state, including this title and Subtitle B, Title 3, Utilities Code.

(3) "Gas" includes natural gas, bradenhead gas, casinghead gas, or gas produced from an oil or gas well.

(4) "Manifest" includes a document issued by a shipper that covers oil or a petroleum product transported by motor vehicle.

(5) "Oil" includes crude petroleum oil:

(A) in its natural state as produced; or

(B) from which only the basic sediment and water have been removed.

(6) "Person" includes an individual, corporation, association, partnership, receiver, trustee, guardian, executor, administrator, or representative.

(7) "Petroleum product" includes:

(A) refined crude oil;

(B) crude tops;

(C) topped crude;

(D) processed crude petroleum;

(E) residue from crude petroleum;

(F) cracking stock;

(G) uncracked fuel oil;

(H) fuel oil;

(I) treated crude oil;

(J) residuum;

(K) gas oil;

(L) casinghead gasoline;

(M) natural gas gasoline;

(N) naphtha;

(O) distillate;

(P) gasoline;

(Q) kerosene;

(R) benzine;

(S) wash oil;

(T) waste oil;

(U) blended gasoline;

(V) lubricating oil;

(W) blends or mixtures of petroleum; or

(X) any other liquid petroleum product or byproduct derived from crude petroleum oil or gas.

(8) "Shipping papers" includes:

(A) a bill of lading that covers oil or a petroleum product transported by railway;

(B) a manifest; or

(C) a document that covers oil or a petroleum product transported by pipeline, boat, or barge.

(9) "Tender" means a permit or certificate of clearance for the transportation of oil or a petroleum product that is approved and issued or registered under the authority of the commission.

(10) "Unlawful gas" includes gas produced or transported in violation of a law of this state or commission order.

(11) "Unlawful petroleum product" includes a petroleum product:

(A) any part of which was processed or derived in whole or in part from:

(i) unlawful oil;

(ii) a product of unlawful oil; or

(iii) unlawful gas; or

(B) transported in violation of a law of this state or commission order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.002. EXCEPTION. This chapter does not apply to the retail purchase of a petroleum product if that product is:

(1) contained in the ordinary equipment of a motor vehicle; and

(2) used only to operate the motor vehicle in which it is contained.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.003. DEFINITION OF UNLAWFUL OIL; PRESUMPTION. (a) For purposes of this chapter, oil is unlawful if the oil is:

(1) produced in this state from a well in excess of the amount allowed by a commission order or otherwise in violation of a law of this state or commission order; or

(2) transported in violation of a law of this state or commission order.

(b) It is presumed that oil is "unlawful oil" for purposes of this chapter if the oil is retained in storage for more than six years without being used, consumed, or moved into regular commercial channels.

(c) The presumption under Subsection (b) may be rebutted by proof that the oil:

(1) was produced from a well within the production allowable then applying to that well;

(2) was not produced in violation of a law of this state or commission order; and

(3) if transported from the lease from which it was produced, was not transported in violation of a law of this state or commission order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER B. TENDERS AND MANIFESTS

Sec. 115.011. TENDER REQUIREMENTS. The commission by order may require that a tender be obtained before oil or a petroleum product may be transported or received for transportation by pipeline, railway, boat, or barge.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.012. TENDER; APPLICATION REQUIREMENTS. (a) The commission by order shall prescribe the form of a tender and a tender application.

(b) The form must show:

(1) the name and address of the shipper or other person who tenders oil or a petroleum product for transportation;

(2) the name and address of the transporter if the commission order requires the transporter to be designated;

(3) the quantity and classification of each commodity authorized to be transported;

(4) each location at which delivery is to be made to the transporter; and

(5) other related information as prescribed by commission

order.

(c) Each tender must:

(1) bear a date and serial number;

(2) state the expiration date of the tender; and

(3) be executed by an agent authorized by the commission to deny, approve, or register tenders.

(d) An agent may not approve or register a tender for the transportation of unlawful oil or an unlawful petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.013. ACTION ON TENDER APPLICATION. (a) If an agent of the commission rejects an application for a tender, the agent shall return a copy of the application to the applicant with the reasons for the rejection indicated on the copy.

(b) A person whose tender application is not acted on before the 21st day after the date on which the application is filed is entitled to judicial review in the manner provided by Section 115.014 for the appeal of a rejection of a tender application.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.014. JUDICIAL REVIEW. (a) A person whose tender application is rejected may appeal that action by filing a petition against the commission in a district court of Travis County for review of the agent's decision.

(b) The clerk of the court shall issue to the commission a notice setting forth briefly the cause of action stated in the petition. The court may not enter an order on the petition until the court conducts a hearing. The court must conduct the hearing not later than the fifth day after the date of issuance of the notice.

(c) The court may sustain, modify, or overrule the agent's decision and may issue a restraining order or injunction as warranted by the facts.

(d) A person dissatisfied with the decision of the district court may appeal to the court of appeals.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.015. TRANSFER UNDER TENDER. (a) A person who obtains a tender may not transport or deliver, or cause or permit to be transported or delivered, any more or any different commodity than that authorized by the tender.

(b) A connecting carrier or consignee who receives oil or a petroleum product from another transporter by pipeline, railway, boat, or barge under authority of shipping papers executed by the initial transporter that bear the date and serial number of a tender issued to that initial transporter is considered to receive the oil or petroleum product by authority of that tender if the commission order provides that a connecting carrier or consignee may rely on the shipping papers.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.016. ISSUANCE OF MANIFEST. (a) A person who obtains a tender required under this subchapter shall sign and issue a manifest to the operator of each motor vehicle used to transport the oil or petroleum product that is covered by the tender.

(b) The person shall issue a separate manifest for each load carried by the motor vehicle.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.017. FORM OF MANIFEST. (a) The commission by order may prescribe the form of a manifest.

(b) A manifest must:

(1) bear a certificate signed by the shipper that states the amount of oil or petroleum products to be transported and specifies each petroleum product to be transported; and

(2) include, if required by commission order:

(A) the date and serial number of the tender that authorizes the transportation or a seal, number, or other evidence of the tender, if a tender is required;

(B) the amount and classification of each petroleum product to be transported;

(C) the name and address of the transporter, the name and address of the shipper, and the name and address of the consignee, if known;

(D) the name and address of the operator of the motor vehicle;

(E) the license plate number of the motor vehicle;

(F) the date, time, and place at which the motor vehicle was loaded and the destination, if known, of the load; and

(G) other related information as required by commission order.

(c) If the form of the manifest is not prescribed by commission order, each shipper required to issue a manifest to a transporter shall use a form of manifest that is:

(1) commonly used in commercial transactions; or

(2) required by another state agency to accompany the movement of gasoline.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.018. TRANSFER UNDER MANIFEST; RESTRICTIONS. (a) A person authorized to transport oil or a petroleum product on a manifest issued by a shipper may not receive:

(1) a commodity for transportation that is different from the commodity described in the manifest; or

(2) oil or a petroleum product in an amount exceeding the amount authorized by the manifest.

(b) A person authorized to transport oil or a petroleum product by a shipper-issued manifest that bears on its face the date and serial number of the tender may rely on the manifest delivered to that person and each consignee or person to whom the transporter delivers oil or a petroleum product covered by that manifest may rely on the manifest as authority to receive the commodity delivered if the manifest:

(1) appears to be valid on its face;

(2) is signed by the shipper; and

(3) bears the certificate of the shipper that the transportation of the oil or petroleum product is authorized by the tender.

(c) If the commission by order prohibits the transportation of oil or a petroleum product by motor vehicle without a manifest that shows the date and serial number of a tender authorizing the transportation, a person may not ship or transport or cause to be

shipped or transported by motor vehicle oil or a petroleum product unless the person furnishes the manifest to the operator of the motor vehicle. The person transporting the oil or petroleum product shall maintain the manifest in the vehicle at all times during the shipment. If the person to whom the tender is issued is the operator of the motor vehicle and the tender identifies the motor vehicle by license number and covers one load, the person may carry the tender in the vehicle in lieu of a manifest.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.019. RECEIPT REQUIRED. A person who transports oil or a petroleum product by motor vehicle under conditions that require a tender or manifest shall obtain a receipt from each person to whom any part of the oil or petroleum product is delivered. The receipt must be on the reverse side of the tender or manifest and must indicate:

(1) the number of gallons of oil or of each petroleum product delivered;

(2) the date of delivery; and

(3) the signature and address of the purchaser or consignee of the oil or petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.020. RECORDS; INSPECTION. (a) A person who transports by motor vehicle and delivers oil or a petroleum product shall keep in this state for two years each tender or manifest issued to the person, together with the receipts and endorsements on the tender or manifest.

(b) A tender or manifest is at all times subject to inspection by the commission or an agent or inspector of the commission.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER C. FORFEITURE OF UNLAWFUL OIL OR PETROLEUM PRODUCT

Sec. 115.031. FORFEITURE AUTHORIZED. Unlawful oil and unlawful petroleum products, regardless of the date of production or

manufacture, are declared to be a nuisance and shall be forfeited to this state as provided by this subchapter.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.032. REPORT TO ATTORNEY GENERAL. On the discovery of unlawful oil or an unlawful petroleum product, a member of the commission, an agent or employee of the commission, or a peace officer shall immediately file with the attorney general a report that describes the unlawful oil or unlawful petroleum product. The report must state the ownership, party in possession, amount, location, and classification of the oil or petroleum product.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.033. ACTION IN REM. (a) If the attorney general is advised of the presence of unlawful oil or an unlawful petroleum product, the attorney general shall bring an action in rem in the name of the state in Travis County or in the county in which the oil or petroleum product is located against the unlawful oil or petroleum product and against each person who owns, claims, or is in possession of the oil or petroleum product.

(b) If it appears to the court from an examination of the petition or after hearing evidence on the petition at a preliminary hearing that the unlawful oil or petroleum product mentioned in the petition is in danger of being removed, wasted, lost, or destroyed, the court shall:

(1) issue restraining orders or injunctive relief, either mandatory or prohibitive;

(2) appoint a receiver to take charge of the oil or petroleum product; or

(3) direct the sheriff of the county in which the unlawful oil or petroleum product is located to seize and impound the oil or petroleum product pending further orders of the court.

(c) A party to the action may demand a trial by jury on any issue of fact raised by the pleadings, and the case shall proceed to trial in the manner provided for other civil cases.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.034. FORFEITURE SALE. (a) If, on the trial of the action, the oil or petroleum product in controversy is found to be unlawful, the court shall render judgment forfeiting the oil or petroleum product to this state. The court shall issue an order of sale directing the sheriff or a constable of the county in which the oil or petroleum product is located to seize and sell the oil or petroleum product in the same manner as personal property is sold under execution. The court may order the oil or petroleum product sold in whole or in part.

(b) The sale shall be conducted at the courthouse door of the county in which the oil or petroleum product is located.

(c) The court shall apply the money realized from the sale first to the payment of the costs of the action and expenses incident to the sale of the oil or petroleum product. The court may then use not more than one-half of the money to compensate a person for expenses incurred in storing the unlawful oil or petroleum product. Any balance remaining shall be remitted to the comptroller.

(d) The officers of the court shall receive the same fees provided by law for other civil actions. The sheriff who executes the sale shall issue a bill of sale or certificate to the purchaser of the oil or petroleum product, and the commission, on presentation of that certificate of clearance, shall issue a tender, if a tender is required, permitting the purchaser of the oil or petroleum product to move the oil or petroleum product into commerce.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

SUBCHAPTER D. ENFORCEMENT AND PENALTIES

Sec. 115.041. ENFORCEMENT; ARRESTS. (a) To enforce this chapter, an agent of the commission or a peace officer of this state who has probable cause and reasonable grounds to believe that a motor vehicle is transporting unlawful oil or an unlawful petroleum product may stop the vehicle to take samples of the cargo and to inspect the shipping papers.

(b) If, on examination of the motor vehicle, the agent or officer finds that the vehicle is transporting unlawful oil or an unlawful petroleum product or is transporting oil or a petroleum

product without a required tender, the agent or officer, with or without a warrant, shall arrest the operator of the vehicle and file a complaint against the operator under this chapter.

(c) In a criminal action under this chapter, the agent or officer is not entitled to a fee for executing a warrant of arrest or capias or for making an arrest with or without a warrant.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.042. PUBLICATION OF COMMISSION ORDER PRIOR TO ENFORCEMENT. A criminal action may not be maintained against a person involving the violation of a rule or order that the commission adopts, modifies, or amends until the commission publishes a complete copy of the rule or order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.043. CERTIFICATE AS EVIDENCE. (a) A certificate that sets forth the terms of a commission order and states that the order has been adopted and published and was in effect on a specified date or during a specified period is prima facie evidence of those facts if the certificate is:

(1) made under the seal of the commission; and

(2) executed by a member or the secretary of the commission.

(b) The certificate is admissible in evidence in any civil or criminal action that involves the order without further proof of the adoption, publication, or contents of the order.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.044. SERVICE OF PROCESS. (a) In an action or proceeding that involves the enforcement of this chapter or a commission order, a Texas Ranger or agent of the commission may serve any judicial process, warrant, subpoena, or writ as directed by the court issuing the process and shall serve the process in the same manner as a peace officer.

(b) The ranger or agent may serve the process, warrant, or

subpoena anywhere in this state although it may be directed to the sheriff or a constable of a particular county.

(c) The ranger or agent shall make the same return as any other officer, sign the return, and add under the name the title "State Ranger" or "Agent, Railroad Commission of Texas," as appropriate, which is sufficient to make the writ valid if the writ is otherwise properly prepared.

(d) A Texas Ranger or agent of the commission is not entitled to a fee in addition to that person's regular compensation for a service provided under this section.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.045. PLEADING; PROOF. (a) In a complaint, information, or indictment that alleges a violation of a commission order, it is unnecessary to set forth fully the terms of the order and sufficient to allege the substance of the order or the pertinent terms of the order that are alleged to have been violated.

(b) In a criminal action filed under this chapter, a certificate executed by a member or the secretary of the commission that shows the amount of allowable oil that may be produced per day or during a stated period from an oil well, proof of production from which is involved in the criminal action, is admissible and is prima facie evidence of the facts stated in the certificate.

(c) This section does not limit the power of the commission to adopt rules or orders under the oil and gas conservation statutes of this state, including this title and Subtitle B, Title 3, Utilities Code.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.046. VENUE. A criminal action maintained under this chapter must be brought in:

(1) the county in which the oil or petroleum product involved in the criminal action is received or delivered; or

(2) any county in or through which that oil or petroleum product is transported.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

Sec. 115.047. PENALTIES. (a) A person commits an offense if the person is the operator of a motor vehicle that transports oil or a petroleum product and the person:

(1) intentionally fails to stop the vehicle on the command of an agent of the commission or peace officer; or

(2) intentionally fails to permit inspection by the agent or officer of the contents of or the shipping papers accompanying the vehicle.

(b) A person commits an offense if the person:

(1) knowingly violates Section 115.011, 115.015(a), 115.016, 115.018, 115.019, or 115.020;

(2) knowingly ships or transports or causes to be shipped or transported unlawful oil or an unlawful petroleum product by motor vehicle over a public highway in this state;

(3) knowingly ships or transports or causes to be shipped or transported by motor vehicle oil or a petroleum product without the authority of a tender if a tender is required by a commission order; or

(4) if a tender is required by a commission order, knowingly receives from a motor vehicle or knowingly delivers to a motor vehicle oil or a petroleum product that is not covered by a tender authorizing the transportation of the oil or petroleum product.

(c) A person commits an offense if the person:

(1) knowingly ships or transports or causes or permits to be shipped or transported by pipeline, railway, boat, or barge unlawful oil or an unlawful petroleum product;

(2) knowingly receives or delivers for transportation by pipeline, railway, boat, or barge unlawful oil or an unlawful petroleum product;

(3) knowingly ships or transports or causes or permits to be shipped or transported by pipeline, railway, boat, or barge oil or a petroleum product without authority of a tender if a tender is required by a commission order; or

(4) knowingly receives or delivers by pipeline, railway, boat, or barge oil or a petroleum product without authority of a tender if a tender is required by a commission order.

(d) An offense under this section is punishable by a fine of

not less than $50 or more than $200.

Added by Acts 1997, 75th Leg., ch. 166, Sec. 7, eff. Sept. 1, 1997.

CHAPTER 116. COMPRESSED NATURAL GAS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 116.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Compressed natural gas" or "CNG" means natural gas primarily consisting of methane in a gaseous state that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

(3) "Liquefied natural gas" or "LNG" means natural gas primarily consisting of methane in liquid or semisolid state.

(4) "CNG cylinder" means a cylinder or other container designed for use or used as part of a CNG system.

(5) "LNG container" means a container designed for use or used as part of an LNG system.

(6) "CNG system" means a system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or public place by the general public or in conjunction with a motor vehicle or mobile fuel system fueled by compressed natural gas and any system or facilities designed to be used or used in the compression, sale, storage, transportation for delivery, or distribution of compressed natural gas in portable CNG cylinders, but does not include natural gas facilities, equipment, or pipelines located upstream of the inlet of a compressor devoted entirely to compressed natural gas.

(7) "LNG system" means a system of safety devices, containers, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other LNG equipment intended for use or used with a motor vehicle fueled by liquefied natural gas and any system or other facilities designed to be used or used in the sale, storage, transportation for delivery, or distribution of liquefied natural gas.

(8) "Motor vehicle" means any self-propelled vehicle licensed for highway use or used on a public highway.

(9) "Compressed natural gas cargo tank" means a container

built in accordance with A.S.M.E. or D.O.T. specifications and used to transport compressed natural gas for delivery.

(10) "Liquefied natural gas cargo tank" means a container built in accordance with A.S.M.E. or D.O.T. specifications and used to transport liquefied natural gas for delivery.

(11) "Mobile fuel system" means a CNG or LNG system to supply natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

(12) "Motor fuel system" means a CNG or LNG system to supply natural gas as a fuel for an engine used to propel the vehicle.

(13) "Registrant" means any individual exempt from the licensing requirements as established by rule of the commission who is required to register with the commission, any person qualified by examination by the commission, or any person who applies for registration with the commission. Registrant includes an employee of a licensee who performs CNG-related or LNG-related activities.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 276, Sec. 1, eff. Sept. 1, 1995.

Sec. 116.002. EXCEPTIONS. This chapter does not apply to:

(1) the production, transportation, storage, sale, or distribution of natural gas that is not included in the definition of compressed natural gas or liquefied natural gas;

(2) the production, transportation, storage, sale, or distribution of natural gas that is subject to commission jurisdiction under Subtitle A or B, Title 3, Utilities Code;

(3) pipelines, fixtures, and other equipment used in the natural gas industry that are not used or designed to be used as part of a CNG or LNG system; or

(4) pipelines, fixtures, equipment, or facilities to the extent that they are subject to the safety regulations promulgated and enforced by the commission pursuant to Chapter 117, Natural Resources Code, or Subchapter E, Chapter 121, Utilities Code.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.42, eff. Sept. 1,

1999.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 116.011. ADMINISTRATION. The commission shall administer and enforce this chapter and rules and standards adopted under this chapter relating to compressed natural gas and liquefied natural gas.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.012. RULES AND STANDARDS. To protect the health, safety, and welfare of the general public, the commission shall adopt necessary rules and standards relating to the work of compression and liquefaction, storage, sale or dispensing, transfer or transportation, use or consumption, and disposal of compressed natural gas or liquefied natural gas.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.013. NATIONAL CODES. The commission may adopt by reference in its rules all or part of the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.014. FEES. (a) Fees collected by the commission under Section 116.034 of this code for training, examinations, and seminars must be deposited in a special fund in the state treasury designated as the CNG and LNG examination fund. The commission shall use money in this fund to pay the cost of training, examinations, and

seminars sponsored or administered by the commission.

(b) Except as provided by Subsection (a) of this section, money collected by the commission as fees under this chapter shall be deposited in the general revenue fund.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.015. ENTRY ON PROPERTY; INSPECTION AND INVESTIGATION. (a) An employee, agent, or inspector of the commission may enter the premises of a licensee under this chapter or any building or other premises open to the public or inspect any CNG or LNG system or motor vehicle equipped with CNG or LNG equipment at any reasonable time for the purpose of determining and verifying compliance with this chapter and rules of the commission adopted under this chapter.

(b) Any authorized representative of the LPG division may enter any building or premises where an accident has occurred in which CNG or LNG was a probable cause for purposes of investigating the cause, origin, and circumstances of such accident. The LPG division may request that any state or local authority having jurisdiction take appropriate action as may be necessary for preservation of property and premises.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.016. LIMITATIONS ON RULEMAKING AUTHORITY. (a) The commission may not adopt rules restricting advertising or competitive bidding by a licensee or registrant except to prohibit false, misleading, or deceptive practices.

(b) In its rules to prohibit false, misleading, or deceptive practices, the commission may not include a rule that:

(1) restricts the use of any medium for advertising;

(2) restricts the use of a licensee or registrant's personal appearance or voice in an advertisement;

(3) relates to the size or duration of an advertisement by the licensee or registrant; or

(4) restricts the licensee or registrant's advertisement under a trade name.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 54, eff. Sept. 1, 2001.

SUBCHAPTER C. LICENSING AND REGISTRATION

Sec. 116.031. LICENSE REQUIREMENT. (a) Unless otherwise provided in this chapter or by commission rule, a person shall be required to obtain a license from the commission to engage in any of the following activities:

(1) work that includes the assembly, repair, testing, sale, installation, or subframing of CNG cylinders or LNG containers for use in this state;

(2) systems work that includes the installation, modification, or servicing of CNG or LNG systems for use in this state, including the installation, modification, or servicing by any person, except a political subdivision, of a CNG or LNG motor fuel system or mobile fuel system on a vehicle used in the transportation of the general public; or

(3) product work that includes the sale, storage, transportation for delivery, or dispensing of CNG or LNG in this state.

(b) A license obtained by a partnership, corporation, or other legal entity extends to the entity's employees who are performing CNG or LNG work, provided that each employee is qualified and registered as required by rules adopted by the commission.

(c) No license is required by an original vehicle manufacturer or a subcontractor of such manufacturer for the installation and sale of a new CNG or LNG system when such system is installed on a new original vehicle fueled by CNG or LNG.

(d) The commission by rule may provide for the annual registration of all individuals performing CNG-related or LNG-related activities who are exempt from the licensing requirements of the commission. Employees of a political subdivision are not required to be licensed or registered under this chapter.

(e) The commission shall adopt rules providing for the registration of persons engaged in the manufacture of CNG cylinders or LNG containers for use in this state.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1,

1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 189 (H.B. 2127), Sec. 1, eff. September 1, 2019.

Sec. 116.032. LICENSE AND REGISTRATION FEES. (a) The commission shall adopt rules establishing registration fees and license categories and license fees to be charged for application for and issuance and renewal of a license or registration.

(b) The commission by rule may establish reasonable fees for each category of license.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 55, eff. Sept. 1, 2001.

Sec. 116.033. APPLICATION AND RENEWAL PROCEDURES. (a) The commission shall adopt rules establishing procedures for submitting and processing applications for issuance and renewal of licenses and for registration.

(b) A person who is otherwise eligible to renew a license or registration may renew an unexpired license or registration by paying the required renewal fee to the commission before the expiration date of the license or registration. A person whose license or registration has expired may not engage in activities that require a license or registration until the license or registration has been renewed.

(c) A person whose license or registration has been expired for 90 days or less may renew the license or registration by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(d) A person whose license or registration has been expired for more than 90 days but less than one year may renew the license or registration by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(e) A person whose license or registration has been expired for

one year or more may not renew the license or registration. The person may obtain a new license or registration by complying with the requirements and procedures, including the examination requirements, for obtaining an original license or registration.

(f) A person who was licensed or registered in this state, moved to another state, and is currently licensed or registered and has been in practice in the other state for the two years preceding the date of application may obtain a new license or registration without reexamination. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license or registration.

(g) Not later than the 30th day before the date a person's license or registration is scheduled to expire, the commission shall send written notice of the impending expiration to the person at the person's last known address according to the records of the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 56, eff. Sept. 1, 2001.

Sec. 116.034. EXAMINATION AND SEMINAR REQUIREMENTS. (a) The commission may adopt rules providing training and seminar attendance requirements and shall adopt rules providing examination requirements for persons who are required or who wish to be licensed or registered under this chapter.

(b) The commission may adopt a reasonable fee to cover the cost of any training, examination, or seminar required by and sponsored or administered by the commission.

(c) Before a license or registration may be issued, the person to be licensed or registered must satisfactorily complete any training, examinations, and seminars required by the commission.

(d) Not later than the 30th day after the date a person takes a licensing or registration examination under this chapter, the commission shall notify the person of the results of the examination.

(e) If the examination is graded or reviewed by a testing service:

(1) the commission shall notify the person of the results

of the examination not later than the 14th day after the date the commission receives the results from the testing service; and

(2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.

(f) The commission may require a testing service to notify a person of the results of the person's examination.

(g) If requested in writing by a person who fails a licensing or registration examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.

(h) The commission may recognize, prepare, or administer continuing education programs for its licensees and registrants. A licensee or registrant must participate in the programs to the extent required by the commission to keep the person's license.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 57, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1038 (H.B. 1162), Sec. 1, eff. September 1, 2005.

Sec. 116.0345. LICENSE OR REGISTRATION BY ENDORSEMENT. The commission may waive any prerequisite to obtaining a license or registration for an applicant after reviewing the applicant's credentials and determining that the applicant holds a license or registration issued by another jurisdiction that has licensing requirements substantially equivalent to those of this state.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 58, eff. Sept. 1, 2001.

Sec. 116.0346. PROVISIONAL LICENSE OR REGISTRATION. (a) The commission may issue a provisional license or registration to an applicant currently licensed or registered in another jurisdiction who seeks a license or registration in this state and who:

(1) has been licensed or registered in good standing for at

least two years in another jurisdiction, including a foreign country, that has licensing or registration requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the commission relating to the activities regulated under this chapter; and

(3) is sponsored by a person licensed or registered by the commission under this chapter with whom the provisional license or registration holder will practice during the time the person holds a provisional license or registration.

(b) The commission may waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional license or registration is valid until the date the commission approves or denies the provisional license or registration holder's application for a license or registration. The commission shall issue a license or registration under this chapter to the provisional license or registration holder if:

(1) the provisional license or registration holder is eligible to be licensed or registered under Section 116.0345; or

(2) the provisional license or registration holder:

(A) passes the part of the examination under Section 116.034 that relates to the applicant's knowledge and understanding of the laws and rules relating to the activities regulated under this chapter in this state;

(B) meets the academic and experience requirements for a license or registration under this chapter; and

(C) satisfies any other licensing or registration requirements under this chapter.

(d) The commission must approve or deny a provisional license or registration holder's application for a license or registration not later than the 180th day after the date the provisional license or registration is issued. The commission may extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) The commission may establish a fee for provisional licenses or registrations in an amount reasonable and necessary to cover the cost of issuing the license or registration.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 58, eff. Sept. 1, 2001.

Sec. 116.035. DENIAL OF LICENSE. The commission may deny issuance or renewal of a license or registration to any person who fails to qualify under the requirements of this chapter and rules adopted by the commission under this chapter. The commission shall give written notice to an applicant for the issuance or renewal of a license or for registration of the denial of the license or registration and the reasons for denial.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.036. INSURANCE REQUIREMENT. (a) All licensees must acquire and maintain appropriate workers' compensation or coverage for its employees under policies of work-related accident, disability, and health insurance, including coverage for death benefits, from an insurance carrier authorized to provide coverage in this state and other insurance coverage required by the commission in the amounts required by the commission.

(b) Notwithstanding Subsection (a) of this section, a state agency or institution, county, municipality, school district, or other governmental subdivision may submit evidence of workers' compensation coverage by self-insurance if permitted by the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).

(c) The commission shall adopt rules establishing specific requirements for insurance coverage under this chapter and evidence of such coverage. The types and amounts of insurance coverage required by the commission shall be based on the type and category of licensed activity. The commission by rule may allow a licensee to self-insure under Subsection (a) or (e) and by rule shall establish standards for that self-insurance.

(d) The commission may not issue or renew a license, and a licensee may not perform any licensed activity unless the insurance coverage required by the commission's rules is in effect and evidence of that coverage is filed with the commission as required by commission rule.

(e) Every motor vehicle operated in this state as a conveyance for a CNG or an LNG cargo tank must meet motor vehicle insurance requirements established by the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 6, eff. Sept. 1, 1997.

Sec. 116.037. DISCIPLINARY ACTION. (a) The commission shall notify a licensee or registrant in writing if it finds probable violation or noncompliance with this chapter or the rules adopted under this chapter.

(b) The notice shall specify the particular acts, omissions, or conduct comprising the alleged violation and shall designate a date by which the violation must be corrected or discontinued.

(c) The licensee or registrant shall report timely compliance or shall request extension of time for compliance if considered necessary.

(d) If a licensee or registrant objects to the complaint or requirements under this section, or if the commission determines that the licensee or registrant is not proceeding adequately to compliance, then, on written request of the licensee or registrant or order of the commission, a public hearing must be conducted.

(e) If the commission or division determines that the probable violation or noncompliance constitutes an immediate danger to the public health, safety, and welfare, it shall require the immediate cessation of the probable violation or noncompliance and proceed with a hearing.

(f) The commission shall revoke, suspend, or refuse to renew a license or registration or shall reprimand the licensee or registrant if the commission finds that the licensee or registrant has violated or failed to comply with or is violating or failing to comply with this chapter or a rule adopted under this chapter.

(g) The commission may place on probation a person whose license or registration is suspended. If a license or registration suspension is probated, the commission may require the person:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the areas prescribed by the

commission; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(h) Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 1233, Sec. 59, 60, eff. Sept. 1, 2001.

Sec. 116.038. STAGGERED RENEWAL OF LICENSES. The commission by rule may adopt a system under which license and registration fees required by Section 116.032 of this code expire on various dates during the year. For the year in which the license and registration expiration dates are changed, license and registration fees payable on a specified date shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license and registration fees that is allowable to the number of months during which the license and registration is valid. On renewal of the license and registration on the new expiration date, the total license and registration fees are payable.

Added by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER D. MOTOR VEHICLE REGULATION

Sec. 116.071. REGISTRATION RULES. The commission shall adopt rules relating to the registration of motor vehicles that are equipped with a CNG or LNG cargo tank and motor vehicles used principally to transport compressed natural gas or liquefied natural gas in portable cylinders or containers.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.072. REGISTRATION. (a) Each motor vehicle that is

equipped with a CNG or LNG cargo tank and each motor vehicle used principally to transport CNG or LNG in portable cylinders or containers must be registered with the commission as provided by commission rules.

(b) The commission may not impose a fee for registration under this section on a motor vehicle owned by a county.

(c) The commission by rule shall establish a reasonable, nonrefundable annual registration and transfer fee for each CNG or LNG cargo trailer, semitrailer, bobtail, and cylinder-delivery unit registered or transferred as follows:

(1) the annual registration fee established by the commission shall not be less than $100 nor more than $500; and

(2) the annual transfer fee established by the commission shall not be less than $25 nor more than $100.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1991, 72nd Leg., ch. 375, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 66, Sec. 7, eff. Sept. 1, 1997.

Sec. 116.073. SAFETY RULES. The commission shall adopt safety rules relating to the transportation of compressed natural gas and liquefied natural gas in this state.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.074. COOPERATION OF THE DEPARTMENT OF PUBLIC SAFETY. The Department of Public Safety shall cooperate with the commission in administering and enforcing this chapter and rules of the commission relating to regulation of motor vehicles required to be registered under this subchapter.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.075. APPLICATION OF OTHER LAWS. This chapter and the rules adopted under this chapter do not modify, amend, or repeal any laws of this state relating to the regulation of motor carriers.

Renumbered from Sec. 116.076 by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Sec. 116.101. MALODORANTS. Compressed natural gas must be odorized as provided by Subchapter F, Chapter 121, Utilities Code.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 62, Sec. 18.43, eff. Sept. 1, 1999.

Sec. 116.102. TESTING LABORATORIES. The commission shall adopt rules relating to testing of CNG and LNG equipment and to the qualifications required of the persons who are to perform those tests.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

Sec. 116.103. WARNING TAGS. (a) An employee, agent, or inspector of the commission may declare unsafe or dangerous for service any motor vehicle required to be registered under this chapter or any CNG or LNG equipment or system that is defective or that does not otherwise conform to the safety requirements of this chapter and the rules adopted under this chapter and shall attach a warning tag to the motor vehicle, equipment, or system in a conspicuous location.

(b) A person may not sell, furnish, deliver, or supply compressed natural gas and liquefied natural gas for use or consumption by or through a motor vehicle or system in a public place or operate a motor vehicle having CNG or LNG equipment to which a warning tag is attached.

(c) A warning tag may be removed on approval of the commission or by a person designated by the commission to remove the tag. A warning tag may not be removed by any person who is not authorized to remove the tag by the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983. Amended by Acts 1993, 73rd Leg., ch. 227, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER F. ENFORCEMENT

Sec. 116.141. INJUNCTIVE RELIEF. (a) On request of the commission, the attorney general shall bring suit in the name of the state to enjoin a person from violating this chapter or a rule adopted under this chapter.

(b) A suit for injunction instituted under this section is in addition to other remedies available to the commission under this chapter.

(c) A suit seeking injunctive relief under this section shall be brought in a district court in Travis County.

(d) The commission is not required to provide a bond in a suit instituted under this section.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.142. CRIMINAL PENALTY. (a) A person who knowingly violates this chapter or rules adopted by the commission under this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not less than $100 nor more than $5,000.

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

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.143. ADMINISTRATIVE PENALTY. (a) If a person violates this chapter, a rule of the commission adopted under this

chapter, or a term, condition, or provision of a license or registration issued by the commission under this chapter and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the person's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.144. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty under Section 116.145 of this code may be assessed only after the person charged with the violation has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.145. PAYMENT OF PENALTY; REFUND. (a) On the

issuance of notice or an order charging that a violation has occurred, the commission shall inform the person charged within 30 days of the proposed amount of the penalty.

(b) Within the 30-day period immediately following the day on which the notice or order is issued, the person charged with the penalty shall pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for placement in an escrow account.

(c) If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within the 30-day period immediately following that determination, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

Sec. 116.146. RECOVERY OF PENALTY. Civil penalties owed under Sections 116.143 through 116.145 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 487, ch. 99, Sec. 1, eff. Sept. 1, 1983.

CHAPTER 117. HAZARDOUS LIQUID OR CARBON DIOXIDE PIPELINE TRANSPORTATION INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 117.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Hazardous liquid" means:

(A) petroleum or any petroleum product;

(B) nonpetroleum fuel, including biofuel, that is

flammable, toxic, or corrosive or would be harmful to the environment if released in significant quantities; and

(C) a substance or material, other than liquefied natural gas, determined by the United States secretary of transportation to pose an unreasonable risk to life or property when transported by a hazardous liquid pipeline facility in a liquid state.

(3) "Transportation of hazardous liquids or carbon dioxide" means the movement of hazardous liquids or carbon dioxide by pipeline, or their storage incidental to movement, except that it does not include any such movement through gathering lines in rural locations or production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

(4) "Pipeline facilities" includes new and existing pipe, rights-of-way, and any equipment, facility, or building used or intended for use in the transportation of hazardous liquids or carbon dioxide.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 2, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 3, eff. September 1, 2013.

SUBCHAPTER B. JURISDICTION, POWERS, AND DUTIES

Sec. 117.011. JURISDICTION UNDER DELEGATED FEDERAL AUTHORITY. (a) The commission has jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(b) The commission may seek designation by the United States secretary of transportation as an agent to conduct safety inspections of interstate hazardous liquid or carbon dioxide pipeline facilities located in this state.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 3, eff.

Sept. 1, 1993; Acts 1997, 75th Leg., ch. 951, Sec. 1, eff. June 18, 1997.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 1, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 4, eff. September 1, 2013.

Sec. 117.012. RULES AND STANDARDS. (a) The commission shall adopt rules that include:

(1) safety standards applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities; and

(2) safety standards related to the prevention of damage to interstate and intrastate hazardous liquid or carbon dioxide pipeline facilities resulting from the movement of earth by a person in the vicinity of such a facility, other than movement by tillage that does not exceed a depth of 16 inches.

(a-1) Rules adopted under Subsection (a) that apply to the intrastate transportation of hazardous liquids and carbon dioxide by gathering pipelines in rural locations and intrastate hazardous liquid and carbon dioxide gathering pipeline facilities in rural locations must be based only on the risks the transportation and the facilities present to the public safety, except that the commission shall revise the rules as necessary to comply with Subsection (c) and to maintain the maximum degree of federal delegation permissible under 49 U.S.C. Section 60101 et seq., or a succeeding law, if the federal government adopts rules that include safety standards applicable to the transportation and facilities.

(b) Rules that adopt safety standards do not apply to production, refining, or manufacturing facilities or storage or in-plant piping systems associated with any of those facilities.

(c) The safety standards adopted by the commission in its rules must be compatible with those standards established by the United States secretary of transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(d) The commission may adopt rules that require a hazardous liquid pipeline facility to prepare and submit for commission

approval a facility response plan for all or any part of a hazardous liquid pipeline facility located landward of the coast. Rules shall require the facility response plan to include plans for responding, to the maximum extent practicable, to a worst case discharge and to a substantial threat of such a discharge of hazardous liquids that could reasonably be expected to cause substantial harm to the environment by discharging into navigable waters.

(e) Rules relating to facility response plans shall be consistent with the provisions of the federal Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). Rules shall provide that, in lieu of submitting a plan for approval under Subsection (a), a facility may submit a facility response plan prepared in compliance with the Water Pollution Prevention and Control Act, 33 U.S.C. Section 1321(j)(5). A plan approved or pending approval by the United States Department of Transportation Office of Pipeline Safety shall be deemed approved by the commission for the purposes of this section.

(f) Rules relating to facility response plans do not apply to a hazardous liquid pipeline facility that is required to implement a discharge prevention and response plan under the Oil Spill Prevention and Response Act of 1991, Chapter 40, Natural Resources Code.

(g) The commission shall adopt rules regarding:

(1) public education and awareness concerning hazardous liquid or carbon dioxide pipeline facilities; and

(2) community liaison for the purpose of responding to an emergency concerning a hazardous liquid or carbon dioxide pipeline facility.

(h) The commission shall require operators of hazardous liquid and carbon dioxide pipeline facilities or the designated representatives of such operators to communicate and conduct liaison activities with fire, police, and other appropriate public emergency response officials. The liaison activities must be conducted by meetings in person except as provided by this section. An operator or the operator's representative may conduct required community liaison activities as provided by Subsection (i) only if the operator or the operator's representative has made an effort, by one of the following methods, to conduct a community liaison meeting in person with the officials:

(1) mailing a written request for a meeting in person to the appropriate officials by certified mail, return receipt

requested;

(2) sending a request for a meeting in person to the appropriate officials by facsimile transmission; or

(3) making one or more telephone calls or e-mail message transmissions to the appropriate officials to request a meeting in person.

(i) If the operator or operator's representative cannot arrange a meeting in person after complying with Subsection (h), the operator or the operator's representative shall conduct community liaison activities by one of the following methods:

(1) holding a telephone conference with the appropriate officials; or

(2) delivering the community liaison information required to be conveyed by certified mail, return receipt requested.

(k) The commission by rule shall require the owner or operator of each intrastate hazardous liquid or carbon dioxide pipeline facility any part of which is located within 1,000 feet of a public school building containing classrooms, or within 1,000 feet of another public school facility where students congregate, to:

(1) on written request from the school district, provide in writing the following parts of a pipeline emergency response plan that are relevant to the school:

(A) a description and map of the pipeline facilities that are within 1,000 feet of the school building or facility;

(B) a list of any product transported in the segment of the pipeline that is within 1,000 feet of the school facility;

(C) the designated emergency number for the pipeline facility operator;

(D) information on the state's excavation one-call system; and

(E) information on how to recognize, report, and respond to a product release; and

(2) mail a copy of the requested items by certified mail, return receipt requested, to the superintendent of the school district in which the school building or facility is located.

(l) A pipeline operator or the operator's representative shall appear at a regularly scheduled meeting of the school board to explain the items listed in Subsection (k) if requested by the school board or school district.

(m) The commission may not require the release of parts of an

emergency response plan that include security sensitive information including maps or data. Security sensitive information shall be made available for review by but not provided to the school board.

(n) In this subsection, "telecommunications service" and "information service" have the meanings assigned by 47 U.S.C. Section 153. Notwithstanding Subsection (a), this title does not grant the commission jurisdiction or right-of-way management authority over a provider of telecommunications service or information service. A provider of telecommunications service or information service shall comply with all applicable safety standards, including those provided by Subchapter H, Chapter 756, Health and Safety Code.

(o) The power granted by Subsection (a) does not apply to:

(1) surface mining operations; or

(2) other entities or occupations if the commission determines in its rulemaking process that exempting those entities or occupations from rules adopted under that subsection:

(A) is in the public interest; or

(B) is not likely to cause harm to the safety and welfare of the public.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 4, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 616, Sec. 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 951, Sec. 2, eff. June 18, 1997; Acts 2001, 77th Leg., ch. 1233, Sec. 61, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1082, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 267 (H.B. 2161), Sec. 6, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 1197 (H.B. 4300), Sec. 2, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 17.003, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1045 (H.B. 2982), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 5, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 57 (H.B. 1818), Sec. 7, eff. September 1, 2017.

Sec. 117.013. RECORDS AND REPORTS. (a) Each owner or operator of a pipeline engaged in the transportation of hazardous liquids or carbon dioxide within this state shall maintain records, make reports, and provide any information the commission may require under the jurisdiction granted by this chapter and 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(b) The commission, by rule, shall designate the records that are required to be maintained and the reports that are to be filed by the owner or operator and shall provide forms for reports if necessary.

(c) The commission may require the owners or operators of hazardous liquid or carbon dioxide pipeline facilities to prepare and make available for inspection by its employees or agents or file for approval a procedural manual for each such facility in accordance with the requirements of Title 49, Part 195.402, Code of Federal Regulations.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 5, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 6, eff. September 1, 2013.

Sec. 117.014. INSPECTION AND EXAMINATION OF RECORDS AND PROPERTY. (a) The commission and its employees and designated agents may enter property on which is located pipeline facilities or any other property relating to the transportation of hazardous liquids or carbon dioxide by pipeline and may inspect and examine the records and property to the extent relevant to determine if a person is acting in compliance with this chapter and rules adopted by the commission under this chapter.

(b) Before the commission or its employees or designated agents enter property for the purposes of this section, the person requesting entry must present proper credentials to the person in charge at the property.

(c) Entry, examination, and inspection under this section may be made only at reasonable times and in a reasonable manner.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug.

29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 6, eff. Sept. 1, 1993.

Sec. 117.015. COMPLIANCE WITH FEDERAL LAW. The commission shall make reports and certifications to the United States Department of Transportation and shall take any other actions necessary to comply with 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 7, eff. September 1, 2013.

SUBCHAPTER C. ENFORCEMENT

Sec. 117.051. CIVIL PENALTY. A person who violates this chapter or a rule adopted by the commission under this chapter is subject to a civil penalty of not more than $200,000 for each act of violation and for each day of violation, provided that the maximum civil penalty that may be assessed for any related series of violations may not exceed $2 million.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1991, 72nd Leg., ch. 724, Sec. 2, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 92, Sec. 2, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 2, eff. September 1, 2013.

Sec. 117.052. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL. (a) If it appears that a rule of the commission has been or is being violated, the commission may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 117.051 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission adopted under this chapter, the district court shall grant the injunctive relief the facts so warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit in the name of the state for injunctive relief to recover the civil penalty, or for both injunctive relief and the civil penalty.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.

Sec. 117.053. CRIMINAL PENALTY FOR VIOLATION OF CHAPTER AND RULES. (a) A person who intentionally violates this chapter or a rule adopted under this chapter commits an offense.

(b) An offense under this section is punishable by a fine of not more than $2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.137, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 3, eff. September 1, 2013.

Sec. 117.054. CRIMINAL PENALTY FOR INJURING OR DESTROYING PIPELINE FACILITIES. (a) A person who intentionally injures or destroys or attempts to injure or destroy any pipeline facility in this state commits an offense.

(b) An offense under this section is punishable by a fine of not more than $2 million, confinement in the Texas Department of Criminal Justice for a term of not more than five years, or both such fine and imprisonment.

(c) In the prosecution of a defendant for multiple offenses under this section, all of the offenses are considered to be part of the same criminal episode, and as required by Section 3.03, Penal Code, the sentences of confinement shall run concurrently. Additionally, the cumulative total of fines imposed under this section may not exceed the maximum amount imposed on conviction of a single offense under this section.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.138, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 104 (S.B. 900), Sec. 4, eff. September 1, 2013.

SUBCHAPTER D. MISCELLANEOUS PROVISIONS

Sec. 117.101. LIMITATIONS ON POWERS OF CITIES. (a) Except as otherwise provided by this subchapter, this chapter may not be construed to reduce, limit, or impair the authority provided by law to any city.

(b) Except as provided by Subsection (c) of this section, a city may not adopt or enforce an ordinance that establishes safety standards or practices applicable to the pipeline transportation of hazardous liquids or carbon dioxide or hazardous liquid or carbon dioxide pipeline facilities that are subject to regulation by federal or state law.

(c) A city may adopt ordinances that establish conditions for installing or relocating pipelines over, under, along, or across public streets and alleys within the boundaries of the city.

Added by Acts 1983, 68th Leg., p. 4914, ch. 873, Sec. 1, eff. Aug. 29, 1983. Amended by Acts 1993, 73rd Leg., ch. 28, Sec. 7, eff. Sept. 1, 1993.
Amended by:

Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 3, eff. June 17,

2005.

Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 1, eff. September 1, 2005.

Sec. 117.102. AUTHORITY OF CITY TO ASSESS CHARGES. (a) Except as otherwise provided by this section, a city may not assess a charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility on, along, or across a public road, highway, street, alley, stream, canal, or other public way.

(b) A city may:

(1) assess a reasonable annual charge for the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal by an owner or operator of a hazardous liquid or carbon dioxide pipeline facility on, along, or across the public roads, highways, streets, alleys, streams, canals, or other public ways located within the city and maintained by the city; and

(2) recover the reasonable cost of repairing damage to a public road, highway, street, alley, stream, canal, or other public way located within the city and maintained by the city that is caused by the placement, construction, maintenance, repair, replacement, operation, use, relocation, or removal of a hazardous liquid or carbon dioxide pipeline facility if the owner or operator of the facility does not repair the damage in accordance with generally applicable paving standards or other applicable standards in the city.

(c) A charge authorized by Subsection (b)(1) may not exceed the cost to the city of administering, supervising, inspecting, and otherwise regulating the location of the pipeline facility, including maintaining records and maps of the location of the pipeline facility.

(d) The owner or operator of a pipeline facility may appeal the assessment of a charge under Subsection (b)(1) to the commission. The commission shall hear the appeal de novo. Unless the city that assessed the charge establishes that the charge is authorized by this section, the commission shall declare the charge invalid or reduce the charge to an amount authorized by this section. The commission has exclusive jurisdiction to determine whether a charge under Subsection (b)(1) is authorized by this section. The owner or

operator of the pipeline facility and the city shall share equally the costs incurred by the commission in connection with the appeal.

(e) A city must file suit to collect a charge authorized by Subsection (b)(1) not later than the fourth anniversary of the date the charge becomes due. The running of the limitations period under this subsection is tolled on the filing of an appeal of the charge under Subsection (d) and begins running again on the date the appeal is determined.

(f) This section may not be construed to prevent a city from:

(1) recovering the reasonable cost of repairing damage to a city facility, other than a public way, caused by acts of the owner or operator of a pipeline facility; or

(2) requiring the owner or operator of a pipeline facility to relocate the pipeline facility, at the owner's or operator's expense, to permit the construction, maintenance, modification, or alteration of a city facility.

(g) Notwithstanding Subsection (f)(2), the city shall pay the cost of relocating a pipeline facility if the pipeline facility is authorized by a property right that has priority over the city's right to use the public way for the city facility.

Added by Acts 2005, 79th Leg., Ch. 530 (H.B. 951), Sec. 4, eff. June 17, 2005.
Added by Acts 2005, 79th Leg., Ch. 720 (S.B. 480), Sec. 2, eff. September 1, 2005.

CHAPTER 118. PIPELINE ASSESSMENT AND TESTING

Sec. 118.001. AUTHORITY TO REQUIRE PLAN FOR PIPELINE ASSESSMENT OR TESTING. (a) The Railroad Commission of Texas by rule may require an operator to file for commission approval a plan for assessment or testing of a pipeline if the commission finds that:

(1) there is reason to believe that the pipeline may present a hazard to public health or safety;

(2) the commission lacks adequate information to assess the risk to public health or safety presented by the pipeline; or

(3) a plan is necessary for the commission to initiate or complete a pipeline safety investigation.

(b) The Railroad Commission of Texas may take enforcement action against a person who fails to:

(1) submit a required plan; or

(2) participate in a pipeline safety investigation.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.002. PIPELINES FOR WHICH PLAN MAY BE REQUIRED. (a) Except as provided by Subsection (b), the rules adopted under this chapter may apply to interstate pipelines, intrastate pipelines, portions of pipeline systems the regulation of which the federal government has temporarily delegated to the Railroad Commission of Texas, or gathering lines, and to pipelines for the transportation of any substance or material under the jurisdiction of the commission, as specified by the commission.

(b) Exempted from the application of this chapter are gathering lines outside:

(1) the limits of an incorporated or unincorporated city or village;

(2) any designated residential or commercial area such as residential subdivisions, businesses, shopping centers, or community development.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1273, Sec. 1, eff. June 21, 2003.

Sec. 118.003. CONTENTS OF PLAN. The rules adopted under this chapter may require that a plan include:

(1) an identification of risk factors associated with a pipeline system, including population density;

(2) information about previous inspections and maintenance;

(3) information about pressure tests;

(4) information about leaks;

(5) information about operating characteristics;

(6) information about corrosion protection methods; and

(7) other information that may assist the Railroad Commission of Texas in assessing the risk to public health or safety presented by the pipeline.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.004. APPROVAL OF PLAN. The Railroad Commission of Texas may approve a plan that complies with rules adopted under this chapter.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

Sec. 118.005. CONSEQUENCES OF PLAN APPROVAL. The approval of a plan by the Railroad Commission of Texas does not constitute a certification or representation that the pipeline is in compliance with or exempt from applicable safety standards.

Added by Acts 2001, 77th Leg., ch. 1233, Sec. 62, eff. Sept. 1, 2001.

CHAPTER 119. OWNERSHIP OF CARBON DIOXIDE CAPTURED BY CLEAN COAL PROJECT

Sec. 119.001. DEFINITIONS. In this chapter:

(1) "Clean coal project" has the meaning assigned by Section 5.001, Water Code.

(2) "Commission" means the Railroad Commission of Texas.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.002. ACQUISITION OF CARBON DIOXIDE. (a) The commission shall acquire title to carbon dioxide captured by a clean coal project.

(b) The right, title, and interest in carbon dioxide acquired under this section are the property of the commission, acting on behalf of the state, and shall be administered and controlled by the commission in the name of the state.

(c) A right, title, or interest acquired under this section does not vest in any fund created by the Texas Constitution.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.0025. MONITORING OF SEQUESTERED CARBON DIOXIDE. The Bureau of Economic Geology of The University of Texas at Austin shall monitor, measure, and verify the permanent status of sequestered carbon dioxide in which the commission has acquired the right, title, and interest under Section 119.002.

Added by Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 3, eff. September 1, 2007.

Sec. 119.003. TRANSFER COSTS. Carbon dioxide transferred to the state under Section 119.002 shall be transferred to the state without cost, other than administrative and legal costs incurred in making the transfer.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.004. LIABILITY. (a) The transfer of title to the state under Section 119.002 does not relieve an owner or operator of a clean coal project of liability for any act or omission regarding the generation of carbon dioxide performed before the carbon dioxide was captured.

(b) On the date the commission acquires the right, title, and interest in carbon dioxide captured by a clean coal project under Section 119.002, the owner or operator of the clean coal project is relieved from liability for any act or omission regarding the carbon dioxide injection location, and the method or means of performing carbon dioxide injection, if the injection location and method or means of injection comply with the terms of a license or permit issued by the state and applicable state law and regulations.

(c) Notwithstanding Subsection (b), no owner, operator, or contractor of the clean coal project is immune from liability for personal injury or death that results from construction of the site, or drilling or operation of the injection wells.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 4, eff.

September 1, 2007.

Sec. 119.005. SALE OF CARBON DIOXIDE FOR BENEFICIAL USE. (a) The commission may sell, for enhanced oil recovery or other beneficial use, carbon dioxide that is:

(1) captured by a clean coal project; and

(2) not injected for permanent storage in a geologic formation.

(b) The commission shall deposit any proceeds from the sale of carbon dioxide under this section to the credit of the general revenue fund.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.

Sec. 119.006. INDEMNIFICATION. The University of Texas System, the permanent university fund, and the Texas Board of Criminal Justice may enter into a lease with the commission or with an owner or operator of a clean coal project for the use of lands owned or controlled by the system, the fund, or the board for permanent storage of carbon dioxide captured by a clean coal project, provided that such lease adequately indemnifies the system, the fund, the board, and the Texas Department of Criminal Justice against liability for personal injury or property damage incurred by the system, the fund, the board, or the department as a result of the escape or migration of the carbon dioxide after it is injected into a zone or reservoir. This section does not affect the application of Chapter 101, Civil Practice and Remedies Code, to any activity carried out by a governmental unit, as defined by that chapter.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 8 (H.B. 149), Sec. 1, eff. September 1, 2006.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 5, eff. September 1, 2007.

Sec. 119.007. REPRESENTATION BY ATTORNEY GENERAL. (a) In this section, "state agency" includes:

(1) a department, commission, board, office, or other agency in the legislative, executive, or judicial branch of state government; and

(2) a university system or institution of higher education as defined by Section 61.003, Education Code.

(b) A state agency may request the attorney general to represent the state agency in a legal proceeding that arises from an escape or migration of carbon dioxide captured or sequestered in connection with a clean coal project.

(c) If the attorney general declines to represent the state agency, the state agency may obtain outside counsel in accordance with Section 402.0212, Government Code, and for purposes of that section, the attorney general's declination to represent the agency constitutes the attorney general's approval of the outside counsel for the matter.

Added by Acts 2007, 80th Leg., R.S., Ch. 562 (S.B. 1461), Sec. 6, eff. September 1, 2007.

CHAPTER 120. VERIFICATION, MONITORING, AND CERTIFICATION OF CLEAN ENERGY PROJECT

Sec. 120.001. DEFINITIONS. In this chapter:

(1) "Bureau" means the Bureau of Economic Geology of The University of Texas at Austin.

(2) "Clean energy project" means a project to construct a coal-fueled, natural gas-fueled, or petroleum coke-fueled electric generating facility, including a facility in which the fuel is gasified before combustion, that will:

(A) have a capacity of at least 200 megawatts;

(B) meet the emissions profile for an advanced clean energy project under Section 382.003(1-a)(B), Health and Safety Code;

(C) capture at least 70 percent of the carbon dioxide resulting from or associated with the generation of electricity by the facility;

(D) be capable of permanently sequestering in a geological formation the carbon dioxide captured; and

(E) be capable of supplying the carbon dioxide captured for purposes of an enhanced oil recovery project.

(3) "Commission" means the Railroad Commission of Texas.

(4) "Sequester" means to inject carbon dioxide into a geological formation in a manner and under conditions that create a reasonable expectation that at least 99 percent of the carbon dioxide injected will remain sequestered from the atmosphere for at least 1,000 years.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 3, eff. June 14, 2013.

Sec. 120.002. CERTIFICATION OF CLEAN ENERGY PROJECT. (a) The commission is the authority responsible for certifying whether a project has met the requirements for a clean energy project.

(b) An entity may apply to the commission for a certification that a project operated by the entity meets the requirements for a clean energy project. An entity may not submit an application under this section before September 1, 2018. The application must be accompanied by:

(1) a certificate from a qualified independent engineer that the project is operational and meets the standards provided by Sections 120.001(2)(A), (B), and (C); and

(2) a fee payable to the commission.

(c) The amount of the fee prescribed by Subsection (b)(2) is $50,000 unless the commission by rule determines that a fee in a greater amount is necessary to cover the commission's costs of processing an application.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 4, eff. June 14, 2013.

Sec. 120.003. MONITORING OF SEQUESTERED CARBON DIOXIDE. (a) An entity that applies to the commission under Section 120.002 for a certification that a project operated by the entity meets the requirements for a clean energy project is responsible for conducting

a monitoring, measuring, and verification process that demonstrates that the project complies with the requirements of Section 171.602(b)(4), Tax Code.

(b) The entity shall contract with the bureau for the bureau to:

(1) design initial protocols and standards for the process described by Subsection (a);

(2) review the conduct of the process described by Subsection (a) in order to make any necessary changes in the design of the protocols and standards;

(3) evaluate the results of the process described by Subsection (a);

(4) provide an evaluation of the results of the process described by Subsection (a) to the commission; and

(5) determine whether to transmit to the comptroller the verification described by Section 171.602(b)(4), Tax Code.

(c) Unless otherwise agreed by the entity and the bureau, a contract required by Subsection (b) must require the entity to compensate the bureau by paying an annual fee in accordance with the following schedule:

Year	Amount
One	$700,000
Two	$1,300,000
Three	$1,800,000
Four	$1,500,000
Five	$1,200,000
Six	$900,000
Seven	$500,000
Eight	$200,000

(d) The first payment under Subsection (c) is due not later than 24 months before the date the entity first supplies carbon dioxide captured by the project to an enhanced oil recovery project.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 5, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1236 (S.B. 1296), Sec. 21.002(17), eff. September 1, 2015.

Sec. 120.004. ISSUANCE OF CERTIFICATE OF COMPLIANCE. (a) On verification that a project meets the requirements for certification as a clean energy project, the commission shall issue a certificate of compliance for the project to the entity operating the project and shall provide a copy of the certificate to the comptroller.

(b) The commission may not issue a certificate of compliance for more than three clean energy projects. Not more than one of the clean energy projects may be a natural gas project.

Added by Acts 2009, 81st Leg., R.S., Ch. 1109 (H.B. 469), Sec. 3, eff. September 1, 2009.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1003 (H.B. 2446), Sec. 6, eff. June 14, 2013.

CHAPTER 121. OWNERSHIP AND STEWARDSHIP OF ANTHROPOGENIC CARBON DIOXIDE

Sec. 121.001. DEFINITIONS. In this chapter:

(1) "Anthropogenic carbon dioxide," "anthropogenic carbon dioxide injection well," and "geologic storage facility" have the meanings assigned by Section 27.002, Water Code.

(2) "Commission" means the Railroad Commission of Texas.

(3) "Storage operator" means a person authorized by the commission to operate a geologic storage facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Sec. 121.002. OWNERSHIP OF ANTHROPOGENIC CARBON DIOXIDE. (a) This section does not apply to anthropogenic carbon dioxide injected for the primary purpose of enhanced recovery operations.

(b) Unless otherwise expressly provided by a contract, bill of sale, deed, mortgage, deed of trust, or other legally binding document or by other law, anthropogenic carbon dioxide stored in a geologic storage facility is considered to be the property of the storage operator or the storage operator's heirs, successors, or

assigns.

(c) Absent a final judgment of wilful abandonment rendered by a court or a regulatory determination of closure or abandonment, anthropogenic carbon dioxide stored in a geologic storage facility is not considered to be the property of the owner of the surface or mineral estate in the land in which the anthropogenic carbon dioxide is stored or of a person claiming under the owner of the surface or mineral estate.

(d) The owner, as designated by Subsection (b) or (c), of the anthropogenic carbon dioxide stored in a geologic storage facility, or the owner's heirs, successors, or assigns, may produce, take, extract, or otherwise possess anthropogenic carbon dioxide stored in the facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Sec. 121.003. ANTHROPOGENIC CARBON DIOXIDE STORAGE TRUST FUND. (a) The anthropogenic carbon dioxide storage trust fund is created as a special fund in the state treasury.

(b) The anthropogenic carbon dioxide storage trust fund is an interest-bearing fund. Interest earned on money in the fund shall be deposited to the credit of the fund.

(c) Fees collected by the commission under Subchapter C-1, Chapter 27, Water Code, and penalties imposed for violations of that subchapter or rules adopted under that subchapter shall be deposited to the credit of the anthropogenic carbon dioxide storage trust fund.

(d) The anthropogenic carbon dioxide storage trust fund may be used by the commission only for:

(1) inspecting, monitoring, investigating, recording, and reporting on geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(2) long-term monitoring of geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(3) remediation of mechanical problems associated with geologic storage facilities and associated anthropogenic carbon dioxide injection wells;

(4) repairing mechanical leaks at geologic storage

facilities;

(5) plugging abandoned anthropogenic carbon dioxide injection wells used for geologic storage;

(6) training and technology transfer related to anthropogenic carbon dioxide injection and geologic storage; and

(7) compliance and enforcement activities related to geologic storage and associated anthropogenic carbon dioxide injection wells.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

Sec. 121.004. EXTRACTION OF STORED ANTHROPOGENIC CARBON DIOXIDE. (a) The commission shall adopt rules allowing anthropogenic carbon dioxide stored in a geologic storage facility to be extracted for a commercial or industrial use.

(b) The commission has jurisdiction over the extraction of anthropogenic carbon dioxide stored in a geologic storage facility.

Redesignated from Natural Resources Code, Chapter 120 by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 27.001(44), eff. September 1, 2011.

CHAPTER 122. TREATMENT AND RECYCLING FOR BENEFICIAL USE OF FLUID OIL AND GAS WASTE

Sec. 122.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Fluid oil and gas waste" means waste containing salt or other mineralized substances, brine, hydraulic fracturing fluid, flowback water, produced water, or other fluid that arises out of or is incidental to the drilling for or production of oil or gas.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

Sec. 122.002. OWNERSHIP OF FLUID OIL AND GAS WASTE TRANSFERRED FOR TREATMENT AND SUBSEQUENT BENEFICIAL USE. Unless otherwise

expressly provided by an oil or gas lease, a surface use agreement, a contract, a bill of sale, or another legally binding document:

(1) when fluid oil and gas waste is produced and used by or transferred to a person who takes possession of that waste for the purpose of treating the waste for a subsequent beneficial use, the waste is considered to be the property of the person who takes possession of it for the purpose of treating the waste for subsequent beneficial use until the person transfers the waste or treated waste to another person for disposal or use; and

(2) when a person who takes possession of fluid oil and gas waste for the purpose of treating the waste for a subsequent beneficial use transfers possession of the treated product or any treatment byproduct to another person for the purpose of subsequent disposal or beneficial use, the transferred product or byproduct is considered to be the property of the person to whom the material is transferred.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.
Amended by:
Acts 2019, 86th Leg., R.S., Ch. 147 (H.B. 3246), Sec. 1, eff. September 1, 2019.

Sec. 122.003. RESPONSIBILITY IN TORT. (a) Except as provided by Subsection (b), a person who takes possession of fluid oil and gas waste, produces from that waste a treated product generally considered in the oil and gas industry to be suitable for use in connection with the drilling for or production of oil or gas, and transfers the treated product to another person with the contractual understanding that the treated product will be used in connection with the drilling for or production of oil or gas is not liable in tort for a consequence of the subsequent use of that treated product by the person to whom the treated product is transferred or by another person.

(b) This section does not affect the liability of a person that treats fluid oil and gas waste for beneficial use in an action brought by a person for damages for personal injury, death, or property damage arising from exposure to fluid oil and gas waste or a treated product.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

Sec. 122.004. COMMISSION RULES FOR TREATMENT AND BENEFICIAL USE. The commission shall adopt rules to govern the treatment and beneficial use of oil and gas waste.

Added by Acts 2013, 83rd Leg., R.S., Ch. 209 (H.B. 2767), Sec. 1, eff. September 1, 2013.

CHAPTER 123. TREATMENT AND RECYCLING FOR BENEFICIAL USE OF DRILL CUTTINGS

Sec. 123.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Drill cuttings" means bits of rock or soil cut from a subsurface formation by a drill bit during the process of drilling an oil or gas well and lifted to the surface by means of the circulation of drilling mud.

(3) "Permit holder" means a person who holds a permit from the commission to operate a stationary commercial solid oil and gas waste recycling facility.

(4) "Treatment" means a manufacturing, mechanical, thermal, or chemical process other than sizing, shaping, diluting, or sorting.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 1, eff. May 26, 2017.

Sec. 123.0015. BENEFICIAL USE. (a) For the purposes of this chapter, a use of drill cuttings is considered to be beneficial if the cuttings are used:

(1) in the construction of oil and gas lease pads or oil and gas lease roads; or

(2) as part of a legitimate commercial product.

(b) The commission by rule shall define "legitimate commercial product" for the purposes of this chapter.

(c) The commission by rule shall adopt criteria for beneficial uses to ensure that a beneficial use of recycled drill cuttings under this chapter is at least as protective of public health, public safety, and the environment as the use of an equivalent product made without recycled drill cuttings.

Added by Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 2, eff. May 26, 2017.

Sec. 123.002. OWNERSHIP OF DRILL CUTTINGS TRANSFERRED FOR TREATMENT AND SUBSEQUENT BENEFICIAL USE. Unless otherwise expressly provided by a contract, bill of sale, or other legally binding document:

(1) when drill cuttings are transferred to a permit holder who takes possession of the cuttings for the purpose of treating the cuttings for a subsequent beneficial use, the transferred material is considered to be the property of the permit holder until the permit holder transfers the cuttings or treated cuttings to another person for disposal or use; and

(2) when a permit holder who takes possession of drill cuttings for the purpose of treating the cuttings for a subsequent beneficial use transfers possession of the treated product or any treatment byproduct to another person for the purpose of subsequent disposal or beneficial use, the transferred product or byproduct is considered to be the property of the person to whom the material is transferred.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Sec. 123.003. RESPONSIBILITY IN TORT. A person who generates drill cuttings and transfers the drill cuttings to a permit holder with the contractual understanding that the drill cuttings will be used in connection with road building or another beneficial use is not liable in tort for a consequence of the subsequent use of the drill cuttings by the permit holder or by another person.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Sec. 123.004. PERMIT COPY REQUIRED. A permit holder who takes possession of drill cuttings from the person who generated the drill cuttings shall provide to the generator a copy of the holder's permit.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.

Sec. 123.005. COMMISSION RULES, PERMITS, AND ORDERS FOR TREATMENT AND BENEFICIAL USE. (a) The commission shall adopt rules to govern the treatment and beneficial use of drill cuttings.

(b) A rule adopted by the commission under this chapter or a permit or order issued by the commission regarding the treatment and beneficial use of drill cuttings must be at least as protective of public health, public safety, and the environment as a rule, permit, or order, respectively, adopted or issued by the commission regarding the disposal of drill cuttings.

Added by Acts 2015, 84th Leg., R.S., Ch. 351 (H.B. 1331), Sec. 3, eff. September 1, 2015.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 184 (S.B. 1541), Sec. 3, eff. May 26, 2017.

TITLE 4. MINES AND MINING
CHAPTER 131. URANIUM SURFACE MINING AND RECLAMATION ACT
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 131.001. SHORT TITLE. This chapter may be cited as the Texas Uranium Exploration, Surface Mining, and Reclamation Act.

Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.002. DECLARATION OF POLICY. The legislature finds and declares that:

(1) the extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation;

(2) proper reclamation of land explored for minerals and surface-mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state;

(3) surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications for reclamation operations must vary accordingly;

(4) it is not always possible to explore for or to extract minerals required by our society without disturbing the earth and producing waste materials, and the very character of certain types of surface mining operations occasionally precludes complete restoration of the affected land to its original condition;

(5) unregulated surface mining may destroy or diminish the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources, which results are declared to be inimical to the public interest and destructive to the public health, safety, welfare, and economy of the State of Texas;

(6) due to its unique character or location, some land within the state may be unsuitable for all or certain types of surface mining operations;

(7) reclamation of land explored for minerals and surface-mined land as provided by this chapter will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of land; and

(8) the requirements of this chapter for reclamation and

maintenance of affected land are necessary for the public health and safety and thus constitute a valid application of the police power of this state.

Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.003. PURPOSES. It is declared to be the purpose of this chapter:

(1) to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations as defined in this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(3) to assure that surface mining operations are not conducted where reclamation as required by this chapter is not possible;

(4) to assure that exploration and surface mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources; and

(5) to assure that reclamation of all explored land and surface-mined land is accomplished as contemporaneously as practicable with the exploration or surface mining, recognizing that the exploration for and extraction of minerals by responsible operations is an essential and beneficial economic activity.

Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 1, eff. September 1, 2007.

Sec. 131.004. DEFINITIONS. In this chapter:

(1) "Minerals" means uranium and uranium ore.

(2) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface; provided, this definition shall not be construed to include in situ mining activities associated with the removal of uranium or uranium ore.

(3) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit.

(4) "Affected land" or "land affected" means:

(A) the area from which any materials are to be or have been displaced in a surface mining operation;

(B) the area on which any materials that are displaced are to be or have been deposited;

(C) the haul roads and impoundment basins within the surface mining area; and

(D) other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(5) "Surface mining operation" means those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected.

(6) "Operator" means the individual or entity, including any public or governmental agency, that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) "Overburden" means all materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) "Reclamation" means the process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(9) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the

earth.

(10) "Surface mining permit" or "permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification. These terms do not include:

(A) a discharge permit issued by the commission pursuant to Subchapter H of this chapter; or

(B) an exploration permit issued by the commission pursuant to Subchapter I of this chapter.

(11) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.

(12) "Commission" means the Railroad Commission of Texas.

(13) "Fund" means the Land Reclamation Fund.

(14) "Toxic material" means any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(16) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, government or governmental subdivision or agency, business trust, estate, trust, organization or association of citizens, or any other legal entity.

(17) "Party to the administrative proceedings" means any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this chapter.

(18) "Permit area" means all the area designated as such in

the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, Sec. 42, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 3, eff. June 6, 1979; Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 1, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 413, ch. 171, Sec. 1, eff. May 20, 1981; Acts 1985, 69th Leg., ch. 921, Sec. 5, 6, eff. June 15, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 2, eff. September 1, 2007.

Sec. 131.005. RECLAMATION. (a) The basic objective of reclamation is to reestablish on a continuing basis, where required, vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land.

(b) The process of reclamation may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization and settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollution, soil and wind erosion, or flooding resulting from mining or any other activity that may be considered necessary to accomplish the reclamation of the land affected to a substantially beneficial condition.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.006. EXCLUSIONS AND EXEMPTIONS. The provisions of this chapter do not apply to the following:

(1) surface mining operations conducted on public land regulated by the General Land Office if the land is reclaimed in a manner consistent with this chapter; and

(2) land on which the overburden has been removed and minerals have been produced before June 21, 1975.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

Sec. 131.021. GENERAL AUTHORITY OF COMMISSION. In seeking to accomplish the purposes of this chapter, the commission shall have the authority:

(1) to adopt and amend rules pertaining to exploration, surface mining, and reclamation operations consistent with the general intent and purposes of this chapter;

(2) to issue permits pursuant to the provisions of this chapter;

(3) to conduct hearings pursuant to the provisions of this chapter;

(4) to issue orders requiring an operator to take actions that are necessary to comply with this chapter and with rules adopted under this chapter;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this chapter or rules adopted under this chapter;

(7) to order the immediate cessation of an ongoing exploration or surface mining operation if the commission finds that the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this chapter;

(9) to enter on and inspect, in person or by its agents, an exploration or a surface mining operation that is subject to the provisions of this chapter to assure compliance with the terms of this chapter;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training,

and demonstrations by contract, grant, or otherwise;

(11) to prepare reports and to require persons who hold exploration or surface mining permits to prepare reports;

(12) to collect and disseminate to the public information considered reasonable and necessary for the proper enforcement of this chapter;

(13) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this chapter;

(14) to enter into contracts with state boards and agencies that have pertinent expertise to obtain professional and technical services necessary to carry out the provisions of this chapter; and

(15) to perform other duties and acts required by and provided for in this chapter.

Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.022. JURISDICTION OF COMMISSION. (a) The commission is the mining and reclamation authority for the State of Texas and has exclusive jurisdiction for establishing reclamation requirements for mining and exploration operations in this state, except for in situ recovery processes.

(b) Except as provided by Section 131.354, the commission has exclusive jurisdiction and is solely responsible for the regulation of all exploration activities.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.023. COMMISSION PROCEDURE. The commission shall seek the accomplishment of the purposes of this chapter by all practicable methods.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.024. COMPLIANCE WITH FEDERAL SURFACE MINING LAWS. (a) On passage of federal surface mining legislation, the commission shall take actions necessary to establish the exclusive jurisdiction of this state over the regulation of surface mining and reclamation operations.

(b) If the federal administrative agency disapproves the regulatory program of this state as submitted, the commission shall take all necessary and appropriate action, including making recommendations for remedial legislation, to clarify, alter, or amend the program to comply with the requirements of the federal act.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.025. HEARING PROCEDURE. At a hearing under this chapter, the commission may:

(1) administer oaths or affirmations;

(2) subpoena witnesses and compel their attendance;

(3) take evidence; and

(4) require production of books, papers, correspondence, memoranda, agreements, or other documents or records that are considered relevant or material to the administration of this chapter.

Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.033. DIFFERING TERMS AND PROVISIONS OF RULES. A rule or an amendment of a rule adopted by the commission may differ in its terms and provisions between particular conditions, particular mining techniques, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 39, eff. May 9, 1979; Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.

Sec. 131.034. EXPLORATION ACTIVITIES. The commission shall promulgate rules governing uranium exploration activity.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.035. RULES DESIGNATING UNSUITABLE LAND. (a) The commission shall develop rules that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining in accordance with Sections 131.036 through 131.041 of this code.

(b) The rules shall be in sufficient detail to provide reasonable notice to prospective operators of areas that might be designated as unsuitable for surface mining.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.036. SURVEY OF LAND. (a) When application is made to conduct surface mining operations and before a permit is issued, the commission shall immediately have the areas to be included in the proposed permit surveyed in accordance with the requirements of Sections 131.035 and 131.037 through 131.041 of this code.

(b) In conducting the survey and in declaring various areas to be unsuitable for mining, the commission shall employ competent and scientifically sound data and information as the basis for objective decisions with respect to each area surveyed.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.037. COMMISSION STATEMENT. Before designating a land area as unsuitable for surface mining operations, the commission shall prepare a detailed statement on the potential mineral and other resources in the area, the demand for these resources, and the impact of the designation on the environment, the economy, and the supply of the mineral.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.038. REASONS FOR UNSUITABLE DESIGNATION. After the survey is made, an area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation under this chapter is not feasible;

(2) the operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) the operations will affect renewable resource land that includes aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products;

(4) the operations are located in an area subject to frequent flooding or an area that is geologically unstable and may reasonably be expected to endanger life and property;

(5) the operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic river area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, or city or county park; or

(6) the operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area.

Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.039. PETITION AND HEARING ON DESIGNATION. (a) Any person is entitled to petition the commission to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(b) The petition shall include allegations of facts with supporting evidence that in the opinion of the commission would tend to establish the allegations.

(c) The commission shall make a determination of the validity of the petition, and if the petition is found to be valid, it shall be kept on file by the commission and made available for public inspection.

(d) On application for a surface mining permit for which a valid petition has been filed, the commission shall hold a public hearing as provided in Section 131.163 of this code in the locality of the proposed mining operation.

(e) Any person affected may intervene before the public hearing by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(f) If all the petitioners and the applicant stipulate agreement before the requested hearing, the hearing does not have to be held.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

Sec. 131.040. MODIFYING, AMENDING, AND TERMINATING DESIGNATIONS. The commission may modify, amend, or terminate a designation pursuant to the requirements of Sections 131.035 through 131.039 of this code.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.041. APPLICABILITY OF SUBCHAPTER. The provisions of Sections 131.035 through 131.040 of this code do not apply to land on which surface mining operations were being conducted on June 21,

1975.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.042. RECORDS, REPORTS, MONITORING EQUIPMENT, AND INFORMATION. The commission shall require each permittee to:

(1) establish and maintain appropriate records;

(2) make reports as frequently as the commission may prescribe;

(3) install, use, and maintain necessary monitoring equipment for observing and determining relevant surface or subsurface effects of the mining operation and reclamation program; and

(4) provide other information relative to mining and reclamation operations the commission determines to be reasonable and necessary.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.043. INSPECTION BY COMMISSION. Without advance notice and on presentation of appropriate credentials to the operation supervisor, if present, the authorized representatives of the commission are entitled to enter in, on, or through a surface mining operation or premises in which any records required under Section 131.042 of this code are located, and may at reasonable times and without delay have access to and copy any records and inspect monitoring equipment or methods of operation required under this chapter.

Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.044. TIME AND PROCEDURES FOR INSPECTIONS. (a) The inspections by the commission shall occur on an irregular basis at a frequency necessary to insure compliance with the intent and purposes of this chapter and the commission's rules for the surface mining and

reclamation operations covered by each permit.

(b) The inspections shall occur only during normal operating hours if practicable and without prior notice to the permittee or his agents or employees.

(c) An inspection shall include the filing of an inspection report adequate to enforce the requirements of and to carry out the terms and purposes of this chapter. The commission shall make each report a part of the record and furnish one copy of the report to the operator.

(d) Insofar as practicable, the commission shall establish a system of rotation of inspectors.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.045. SIGN. Each permittee shall maintain at the entrances to the surface mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.046. PROCEDURE ON DETECTION OF VIOLATION. On detection of each violation of a requirement of this chapter, each inspector shall inform the operator of the violation orally at the time of the detection and in writing at a later time and shall report the violation in writing to the commission.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.047. JUDICIAL REVIEW. (a) Any party to the administrative proceedings whose interest is or may be adversely affected by a ruling, order, decision, or other act of the commission may appeal by filing a petition in a district court of Travis County or in the county in which the greater portion of the land in question

is located.

(b) The plaintiff shall pursue his action with reasonable diligence, and if the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(c) The court shall hear the complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.

(d) The court may, under conditions it may prescribe, grant temporary relief that it considers appropriate pending final determination of the proceedings.

(e) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commission.

(f) Repealed by Acts 1981, 67th Leg., p. 2647, ch. 707, Sec. 4(48), eff. Aug. 31, 1981.

Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979; Acts 1981, 67th Leg., p. 2646, ch. 707, Sec. 4(48), eff. Aug. 31, 1981.

Sec. 131.048. CONFIDENTIALITY. Information submitted to the commission concerning mineral deposits, including test borings, core samplings, geophysical logs, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant for an exploration permit or surface mining permit and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff.

September 1, 2007.

Sec. 131.049. TEMPORARY ORDERS PRIOR TO NOTICE AND HEARING. (a) The commission may issue temporary orders relating to a surface mining operation without notice and hearing, or with the notice and hearing as the commission considers practical under the circumstances, when necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the commission issues a temporary order under this authority without a hearing, and if the subject matter of the order is such as to require a public hearing under Section 131.163 of this code or under any rule of the commission, the order shall set a time and place for a public hearing to be held. The hearing shall be held as soon after the temporary order is issued as is practical.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of Chapter 2001, Government Code.

(d) The requirements of Sections 131.159 and 131.160 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to the hearing, but general notice of the hearing shall be given that the commission considers practical under the circumstances.

Added by Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 6, eff. June 6, 1979. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.

SUBCHAPTER C. PLANS AND STANDARDS

Sec. 131.101. RECLAMATION PLAN. (a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies.

(b) A reclamation plan submitted as part of a permit application shall include:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, that immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses;

(4) a description of how the proposed postmining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events included in the reclamation plan; and

(7) other information the commission, by rule, determines to be reasonably necessary to effectuate the purposes of this chapter.

(c) The operator may revise or amend the reclamation plan at any time in accordance with the requirements of this code.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.102. RECLAMATION STANDARDS. (a) A permit issued under this chapter to conduct surface mining operations shall require that the surface mining operations meet all applicable reclamation standards of this chapter and any other requirements that the commission establishes by rule.

(b) Reclamation standards shall apply to all surface mining and reclamation operations that are not exempted or excluded and shall require the operator as a minimum to:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that reaffecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as the condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the permit applicants' declared anticipated land use following reclamation is not considered to be impractical or unreasonable, to involve unreasonable delay in implementation, or to violate federal, state, or local law, provided that a variety of postmining land conditions that differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this section;

(3) reduce all highwalls, spoil piles, and banks to a degree to control erosion effectively and sufficiently to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land, provided that backfilling, compacting, and grading shall be required to restore the approximate original contour where required by federal law and where the volume of overburden is large in comparison to the volume of mineral deposit and the commission considers the requirement to be practical;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by toxic material, and is in a usable condition for

sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation, provided that the requirements of this provision shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) avoiding toxic mine drainage by such measures as:

(i) preventing or removing water from contact with toxic-producing deposits,

(ii) treating drainage to reduce toxic content,

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep toxic drainage from entering ground and surface water;

(B) conducting surface mining operations in a manner to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) removing temporary or large siltation structures from drainways consistent with good water conservation practices after disturbed areas are revegetated and stabilized; or

(D) other actions as the commission may prescribe pursuant to its rules;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines in which mining would cause breakthroughs or would endanger the health or safety of miners;

(11) incorporate with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes current engineering practices for the design and construction of water retention facilities which, at a minimum, shall

be compatible with the requirements of Section 6.0731, Water Code, and applicable federal laws, ensure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) ensure that all debris, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface water or combustion;

(13) ensure that any explosives are used only in accordance with existing state and federal law and rules promulgated by the commission;

(14) ensure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operations;

(15) ensure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property, provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a streambed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected land, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan;

(19) ensure with respect to permanent impoundments of water as part of the approved reclamation plan that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the

requirements of Section 6.0731, Water Code, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(20) meet other criteria pursuant to the commission's rules as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The purpose of this section is to have land affected restored to the same condition as the land that existed enjoyed before the mining or some substantially beneficial condition.

(d) A method of reclamation other than that provided in this section may be approved by the commission after public hearing if the commission determines that any method of reclamation required by this section is not practical and that the alternative method will provide for the affected land to be restored to a substantially beneficial condition.

(e) If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate rules in the manner provided in Section 131.033 of this code.

(f) The operator is entitled to access to the land affected to the extent necessary to carry out the reclamation and maintenance required under this chapter.

Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 305, ch. 141, Sec. 40, eff. May 9, 1979; Acts 1979, 66th Leg., p. 850, ch. 379, Sec. 2, eff. June 6, 1979.

SUBCHAPTER D. SURFACE MINING PERMITS

Sec. 131.131. PERMIT REQUIRED FOR OPERATION. (a) No person shall conduct a surface mining operation unless he first obtains a surface mining permit issued by the commission under this subchapter; provided, any operator conducting a surface mining operation in this state before September 20, 1976, who has filed a permit application pursuant to this chapter, may continue to conduct that surface mining operation until the commission approves or denies his application.

(b) An operator who was conducting a surface mining operation in this state after the expiration of 180 days following the promulgation of the initial rules under Section 131.026 of this code and who has filed a permit application in accordance with the provisions of this subchapter may continue to conduct the surface mining operation until the commission approves or denies his application.

Acts 1977, 65th Leg., p. 2619, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1990, ch. 784, Sec. 3, eff. Aug. 27, 1979.

Sec. 131.132. FORM OF PERMIT APPLICATION. On application to the commission for a surface mining permit, an operator shall submit three copies of a permit application on a form prescribed by the commission, and the commission shall require in the form the information it considers reasonably necessary to process the application and to ensure compliance with the provisions of this chapter.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.133. REQUIRED INFORMATION. The permit application shall include information concerning:

(1) the name, address, ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining;

(2) legal and equitable interests of record, if reasonably ascertainable, in the surface and mineral estates of the permit area and in the surface estate of land located within 500 feet of the permit area, provided that the mineral estate includes only minerals

as defined in this chapter;

(3) persons residing on the property at the time of the application;

(4) current or previous surface mining permits held by the applicant, including any revocations, suspensions, or bond forfeitures;

(5) the type and method of surface mining operation, the engineering techniques, and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the affected land and permit area, the results of any test borings, test pits, or core samplings that have been gathered from the permit area, and the anticipated hydrologic consequences of the mining operation;

(6) the applicant's legal right to surface mine the affected land; and

(7) other pertinent matters that the commission considers reasonably necessary to effectuate the provisions of this chapter.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.134. DOCUMENTS TO BE INCLUDED WITH APPLICATION. An applicant shall include with his permit application a copy of a reclamation plan prepared as provided in Section 131.101 of this code and a copy of the notice published in compliance with the requirement of Section 131.159 of this code.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.135. APPLICATION FEES. (a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule.

(b) An initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed $400.

(c) After approval but before issuance of the surface mining

permit, the applicant shall pay an approved application fee in the amount of $10 per acre of the permit area, which may be paid in annual installments apportioned over the term of the permit.

Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1991, ch. 784, Sec. 4, eff. Aug. 27, 1979; Acts 1983, 68th Leg., p. 358, ch. 81, Sec. 2(b), eff. Sept. 1, 1983.

Sec. 131.136. AMENDMENT TO PERMIT APPLICATION. A permit application may be amended to exclude the part of an operation that lies within an area designated as unsuitable for surface mining under Sections 131.035 through 131.041 of this code.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.137. COMBINED PERMIT APPLICATION. (a) The commission shall adopt rules permitting an operator of more than one noncontiguous surface mining operation to submit a single application for a combined surface mining permit covering all his mining operations.

(b) A combined permit application shall require the same detailing of information as required by this subchapter for each separate location.

(c) An operator desiring to operate under a combined permit may submit a consolidated reclamation plan covering all his operations under rules prescribed by the commission, but he may be required to furnish specific information relating to reclamation of a single operating area if the commission determines that this is necessary to carry out the purposes of this chapter.

(d) Except as provided in this section, each surface mining operation submitted as part of a combined permit application shall be separate and independent of all other surface mining operations included in the same permit application.

(e) The commission may approve or deny an individual surface mining operation and the reclamation plan that relates to an individual surface mining operation without affecting other portions of the same permit application.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.138. FILING APPLICATION WITH COUNTY CLERK. After deleting confidential information as provided in Section 131.048 of this code, the commission shall file for public inspection with the county clerk at the county courthouse of the county in which any portion of the mining is proposed to occur a copy of each application.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.139. SUBMISSION OF APPLICATION TO AGENCIES FOR COMMENT. (a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Natural Resource Conservation Commission, General Land Office, Texas Historical Commission, State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

(b) Each of these agencies shall review the permit application and submit any comments the agency cares to make within 30 days of receipt of the application.

(c) An agency's comments shall include an enumeration of permits or licenses required under the agency's jurisdiction.

(d) The comments of each agency shall be made a part of the record and a copy shall be furnished to the applicant.

Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 795, Sec. 1.154, eff. Sept. 1, 1985; Acts 1995, 74th Leg., ch. 76, Sec. 11.274, eff. Sept. 1, 1995.

Sec. 131.140. APPROVAL OF PERMIT. (a) The commission shall grant a surface mining permit if it is established that the permit application complies with the requirements of this chapter and applicable federal and state laws.

(b) The commission may approve a surface mining permit conditioned on the approval of other state permits or licenses that may be required.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.141. DENIAL OF A PERMIT. The commission shall deny a permit if:

(1) it finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(2) part of the proposed operation lies within an area designated as unsuitable for surface mining in Sections 131.035 through 131.041 of this code;

(3) it is advised by the Texas Natural Resource Conservation Commission that the proposed mining operation will cause pollution of water of the state, or that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had another permit issued under this chapter revoked or any bond posted to comply with this chapter forfeited and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission;

(5) it determines that the proposed operation will endanger the health and safety of the public;

(6) the surface mining operation will adversely affect a public highway or road; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of Sections 131.201 through 131.206 of this code.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979; Acts 1995, 74th Leg., ch. 76, Sec. 11.275, eff. Sept. 1, 1995.

Sec. 131.142. TERM AND TRANSFERABILITY OF PERMIT. (a) A

surface mining permit issued under this chapter for uranium and uranium ore shall be issued for a term of not more than 10 years.

(b) Except as provided in Sections 131.155 through 131.158 of this code, a surface mining permit is nontransferable.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 308, ch. 141, Sec. 41, eff. May 9, 1979; Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 4, eff. June 6, 1979.

Sec. 131.143. LIABILITY INSURANCE POLICY. (a) After a permit application is approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in this state or, if the applicant is unable to obtain coverage from an insurance carrier authorized to do business in this state, file, with the commission's approval, such a certificate of insurance from a surplus lines insurer that meets the requirements of Chapter 981, Insurance Code, and rules adopted by the commissioner of insurance under that chapter.

(b) The liability insurance policy required by Subsection (a) of this section shall cover all surface mining operations of the applicant in this state and shall afford bodily injury protection and accidental business property damage protection in an amount determined by the commission to compensate adequately any persons damaged as a result of surface mining and reclamation operations.

(c) The liability insurance policy shall be maintained in full force and effect during the term of the permit or the renewal of the permit, including the length of all reclamation operations.

Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1050, Sec. 3, eff. June 19, 1987; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.539, eff. Sept. 1, 2003.

Sec. 131.144. RULES FOR REVISION, TRANSFER, AND RENEWAL OF PERMITS. The commission shall promulgate rules for renewal, revision, and transfer of surface mining permits.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.145. RIGHT TO RENEWAL. A valid surface mining permit issued under this chapter carries with it the right of successive renewal on expiration with respect to area within the boundaries of the existing permit.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.146. APPLICATION FOR AND ISSUANCE OF RENEWAL. The holder of a permit may apply for renewal and the renewal shall be issued on the basis of the following requirements and written findings by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of this chapter will continue in full force and effect and unimpaired for the requested renewal, revision, or transfer;

(3) the operator has provided additional or revised information as required by the commission; and

(4) notice under Section 131.159 of this code has been provided with respect to the application for renewal, revision, or transfer.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.147. RENEWAL APPLICATION FEE. (a) Each application for renewal of a surface mining permit shall be accompanied by a renewal application fee as determined by the commission in accordance with a published fee schedule.

(b) The fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall the amount exceed $200.

(c) The approved application fee as provided in Section 131.135

of this code is not applicable to a renewal application except for the portion, if any, that addresses any new land areas.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.148. EXTENSION OF PERMIT COVERAGE. If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit that addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under this chapter.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.149. TERM OF RENEWAL PERMIT. A surface mining permit renewal shall be for a term not to exceed the period of the original permit established under this chapter.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.150. TIME LIMIT FOR RENEWAL APPLICATION. Application for permit renewal shall be made at least 90 days before the expiration of the valid permit.

Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.151. REVISION OF PERMIT. During the term of a surface mining permit, the permittee may submit an application, together with a revised reclamation plan, to the commission for a revision of the permit.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 131.152. APPROVAL OR DISAPPROVAL OF PERMIT REVISION. No application for a revision of a permit may be approved unless the commission finds that reclamation as required under this chapter can be accomplished under the revised reclamation plan.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

Sec. 131.153. GUIDELINES FOR REVISION. (a) The commission shall establish by rule guidelines for a determination of the scale or extent of a revision request to which all permit application information requirements and procedures, including notice and hearings, shall apply.

(b) A revision that proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall be subject at a minimum to the notice and hearing requirements provided in Sections 131.159 and 131.163 of this code.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.154. EXTENSIONS TO AREA. Except for incidental boundary revisions, an extension to the area covered by a permit must be made by application for another permit or for revision of a permit.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.155. TRANSFER OF PERMIT. (a) No transfer, assignment, or sale of the rights granted under a permit issued under this chapter shall be made without the written approval of the commission.

(b) A person desiring to succeed to the interests of a permittee under this chapter must file an application on a form prescribed by the commission and including any pertinent information the commission by rule may require.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.156. REQUIRED INFORMATION FOR TRANSFER. As part of the information for transfer, the commission shall require:

(1) the information required by Subdivisions (1) and (4) of Section 131.133 of this code relating to ownership and other mining activities of the applicant;

(2) proof that the public liability insurance requirement in Section 131.143 of this code will be fulfilled;

(3) proof that the performance bond or substitute collateral required by Sections 131.201 through 131.206 of this code will be furnished; and

(4) the statement of the applicant that he will faithfully carry out all of the requirements of the reclamation plan approved in the original application.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.157. APPROVAL OF TRANSFER. After notice and an opportunity for a public hearing, if required under Sections 131.159 and 131.163 of this code, and on a written finding by the commission that the requirements of Sections 131.146 through 131.150 of this code have been met, the application for transfer shall be approved.

Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.158. DENIAL OF APPLICATION FOR TRANSFER. An application for transfer shall be denied if the applicant has had a permit issued under this chapter revoked or a bond posted to comply with this chapter forfeited, and the conditions causing the permit to

be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 849, ch. 379, Sec. 1, eff. June 6, 1979.

Sec. 131.159. NOTICE BY APPLICANT. (a) At the time an application for a surface mining permit or an application for revision, renewal, or transfer of an existing surface mining permit is submitted under this chapter, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficiently detailed for local residents to locate readily the proposed operation and the location at which the application is available for public inspection.

(b) The notice shall be published in the local newspaper of greatest general circulation in the locality in which the proposed surface mine is to be located.

(c) The notice shall be published at least once a week for four consecutive weeks.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.160. NOTIFICATION BY COMMISSION. The commission shall contact various local governmental bodies, planning agencies, sewage, and water treatment authorities or water companies that have jurisdiction over or in the locality in which the proposed surface mining will occur, and the owners of record of surface areas within 500 feet of any part of the permit area and shall give them notice of the applicant's intention to surface mine a particularly described tract of land and indicate the applicant's permit number, if any, and the place at which a copy of the proposed mining and reclamation plan may be inspected.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.161. COMMENTS. (a) Within 30 days after the last publication as provided in Section 131.159 of this code, each local body, agency, authority, or company may submit written comments with respect to the effect of the proposed operation on the environment within its area of responsibility.

(b) These comments shall be made part of the record, and one copy of the comments shall be furnished to the operator.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.162. WRITTEN OBJECTIONS. (a) Within 30 days after the last publication of notice under Section 131.159 of this code, a person affected or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to the application for a surface mining permit or to the application for the renewal, revision, or transfer of a surface mining permit.

(b) The written objections shall be made part of the record and one copy of the written objections shall be furnished to the operator.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.163. NOTICE AND PUBLIC HEARING. (a) If the commission determines that the application for a surface mining permit is of a significance sufficient to warrant a public hearing, the commission shall hold a public hearing in the locality of the proposed surface mining and reclamation operations.

(b) In determining whether to hold a public hearing, the commission shall consider any objections that have been filed, and if no substantial written objections have been filed, no hearing shall be required.

(c) The commission shall publish notice of the date, time, and location of the public hearing in the newspaper with the greatest general circulation in the locality at least once a week for three consecutive weeks before the scheduled hearing date.

Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 1979, 66th Leg., p. 853, ch. 379, Sec. 5, eff. June 6, 1979.

Sec. 131.165. PROCEDURE. The commission shall comply with the Administrative Procedure and Texas Register Act in all proceedings under this chapter except where inconsistent with this chapter.

Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1989, ch. 784, Sec. 2, eff. Aug. 27, 1979.

SUBCHAPTER E. BONDS AND DEPOSITS

Sec. 131.201. PERFORMANCE BOND REQUIREMENT. (a) After a surface mining permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed by rule, a bond for performance payable to the State of Texas and conditioned on full and faithful performance of all the requirements of this chapter and the permit.

(b) The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations, and as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commission an additional bond or bonds to cover the increments in accordance with Sections 131.202 through 131.206 of this code.

Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.202. AMOUNT OF PERFORMANCE BOND. (a) The amount of the bond required for each bonded area depends on the reclamation requirements of the approved permit and shall be determined by the commission.

(b) The commission's determination shall be based on two estimates, one of which shall be submitted by the permit applicant and the other prepared by the commission under procedures established by rule. Only the commission's estimate will be considered if the applicant waives the right to submit an estimate.

(c) The amount of the bond shall be determined by the commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 639, Sec. 1, eff. June 16, 1991.

Sec. 131.203. BOND WITHOUT SURETY. The commission may accept the bond of the operator itself, without separate surety, if the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure or bond the amount.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.204. EXTENT OF LIABILITY UNDER BOND. Liability under the bond shall be for the duration of surface mining and reclamation operations and for a period coincident with the operator's responsibility pursuant to Section 131.102 of this code.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.205. SECURITY FOR BOND. (a) The bond shall be executed by the operator and a corporate surety licensed to do business in this state, or the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment deposit form prescribed by the commission's rules.

(b) A cash deposit or market value of the substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(c) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.206. INCREASE OR DECREASE OF BOND. (a) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined.

(b) The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of Sections 131.208 through 131.213 of this code.

Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.207. FORFEITURE OF OPERATOR'S PERFORMANCE BOND. On issuance of a final order revoking an operator's permit for failure to comply with an order of the commission to take action as required by this chapter or rules adopted under this chapter, the operator's performance bond shall be forfeited if it is determined that forfeiture is necessary to reclaim land disturbed by the operator's surface mining operation.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.208. APPLICATION FOR RELEASE OF PERFORMANCE BOND OR DEPOSIT. (a) At any time, an operator may file an application with the commission for the release of all or part of the performance bond or deposit.

(b) The application shall be on a form prescribed by the commission and in addition to other information the commission may require, shall include the type and the approximate date of reclamation work performed and a description of the results achieved as they relate to the operator's reclamation plan.

(c) The commission shall file a copy of the bond release application for public inspection with the county clerk at the county courthouse of the county in which the surface mining and reclamation

operation is located.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.209. NOTICE. (a) The operator shall submit a copy of a notice that has been published once a week for four consecutive weeks in the newspaper of greatest general circulation in the locality of the surface mining and reclamation operation.

(b) The advertisement shall be considered part of any bond release application and shall include:

(1) notice of the location and boundaries of the land affected;

(2) the permit number and the date approved;

(3) the amount of the bond filed and the portion sought to be released; and

(4) the location at which the bond release application has been placed for public inspection.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.210. INSPECTION AND EVALUATION. (a) On receipt of the notice and request, the commission shall conduct an inspection and evaluation of the reclamation work involved, the inspection and evaluation to occur within a reasonable time not to exceed 45 days.

(b) The evaluation shall consider among other things:

(1) the degree of difficulty to complete remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability of continuance or future occurrence of pollution; and

(4) the estimated cost of abating pollution.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.211. BASIS FOR RELEASE OF BOND OR DEPOSIT. The commission may release in whole or part the bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion of the bond or deposit has been accomplished as required by this chapter according to the following schedule:

(1) when the operator completes required backfilling, regrading, and drainage control of a bonded area as provided in his approved reclamation plan, the commission may authorize the release of up to 75 percent of the bond or substitute collateral for the applicable permit area, provided the amount of the unreleased portion of the bond or substitute collateral is not less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture; and

(2) when the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in Section 131.102 of this code, the commission may release the remaining portion of the bond or substitute collateral, provided that no bond is fully released until all reclamation requirements of this chapter are fully met.

Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.212. DISAPPROVAL OF APPLICATION FOR BOND OR DEPOSIT RELEASE. If the commission disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the operator in writing of the reasons for disapproval and recommend corrective actions necessary to secure the release.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.213. NOTICE OF RELEASE TO LOCAL GOVERNMENTAL AGENCY. Within 30 days after an application for total or partial bond or deposit release is filed with the commission, the commission shall notify the local governmental agency in which the surface mining operation is located by certified mail.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.214. OBJECTIONS TO RELEASE. (a) Any person or the officer or head of a federal, state, or local governmental agency is entitled to file written objections to the proposed release from the bond or deposit.

(b) The objections must be filed with the commission within 30 days after the last publication of notice as provided in Section 131.209 of this code.

(c) If the commission determines that the application is of a significance sufficient to warrant a public hearing considering the objections that have been filed, the commission shall hold a public hearing.

(d) The commission shall give notice to all interested parties of the time and place of the hearing which shall be conducted as provided in Sections 131.160 through 131.164 of this code.

(e) The hearing shall be held in the locality of the surface mining operation proposed for bond or deposit release.

(f) Notice of the date, time, and location of the public hearing shall be published by the commission as provided in Section 131.163 of this code.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. FUNDS

Sec. 131.231. LAND RECLAMATION FUND. (a) Money received through the payment of fees, loans, grants, gifts, penalties, bond forfeitures, and other money received by the commission shall be deposited in the State Treasury and credited to a special account to be designated the land reclamation fund.

(b) The fund shall be available to the commission and may be spent for the administration and enforcement of this chapter and for the reclamation of land affected by surface mining operations.

Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.232. APPROPRIATION. Money for the operation of the commission under this chapter shall be appropriated by the legislature.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.233. USE OF PROCEEDS FROM BOND FORFEITURES AND PENALTIES. Proceeds from the forfeiture of bonds and penalties recovered shall be spent to reclaim land as provided in this chapter with respect to which the bonds were provided and the penalties assessed.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.234. RECLAMATION OF LAND. (a) In the reclamation of land affected by surface mining for which funds are available, the commission may use services of other state agencies or the federal government and may compensate them for the services.

(b) The commission may have reclamation work done by its own employees or by employees of other governmental agencies or through contracts with qualified persons.

(c) The contracts shall be awarded to the lowest bidder on competitive bids after reasonable advertisement.

(d) The commission and any other agency and any contractor under a contract are entitled to access to the land affected to carry out the reclamation.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. ENFORCEMENT

Sec. 131.261. CONDITIONS, PRACTICES, AND VIOLATIONS CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or a

permit condition required by this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, a member of the commission shall immediately order a cessation of exploration or surface mining operations on the portion of the area relevant to the condition, practice, or violation.

(b) The cessation order shall set a time and place for a hearing to be held before the commission and shall be held as soon after the order is issued as is practicable.

(c) The requirements of Section 131.159 of this code relating to time for notice, newspaper notice, and method of giving notice do not apply to a hearing under this section, but general notice shall be given in the manner that the commission judges to be practicable under the circumstances.

(d) No more than 24 hours after the commencement of the hearing and without adjournment, the commission shall affirm, modify, or set aside the order.

Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 4, eff. September 1, 2007.

Sec. 131.262. VIOLATIONS NOT CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent harm to land, air, or water resources, the commission shall issue a notice to the permittee or the permittee's agent setting a reasonable time not to exceed 30 days for the abatement of the violation. The commission may authorize an extension of the period of time for the abatement of the violation, for good cause as determined by a written finding by the commission.

(b) If, on expiration of the period of time as originally set

or subsequently extended, the commission finds that the violation has not been abated, it may order a cessation of exploration or surface mining operations on the portion of this area relevant to the violation. However, if requested by the operator, a hearing must be held prior to a commission finding or order.

(c) The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Section 131.263 of this code.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 5, eff. September 1, 2007.

Sec. 131.263. CONTINUOUS VIOLATIONS. (a) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the commission also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked.

(b) The order shall set a time and place for a public hearing to be held in accordance with the notice and procedural requirements of Sections 131.159 through 131.164 of this code.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend, or revoke the permit.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.264. FORM OF NOTICES AND ORDERS. (a) Notices and orders issued under Sections 131.261 through 131.263 of this code shall set forth with reasonable specificity:

(1) the nature of the violation and the remedial action required;

(2) the period of time established for abatement; and

(3) a reasonable description of the portion of the surface mining and reclamation operation to which the notice or order applies.

(b) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission.

(c) Notices and orders shall be in writing and shall be signed by the commission or its authorized representative.

(d) A notice or order issued under Sections 131.261 through 131.263 of this code may be modified, vacated, or terminated by the commission.

Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.265. CIVIL ACTIONS. (a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

(1) violates or fails or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this chapter;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to permit inspection of the mine by an authorized representative;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out the provisions of this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide the relief that is

appropriate, and relief granted by the court to enforce Subdivision (1) of Subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of the order under this chapter unless before that time the district court granting the relief sets the order aside or modifies it.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.266. INJUNCTIVE RELIEF AND CIVIL PENALTY. (a) The commission may have a civil suit instituted for injunctive relief to restrain a permittee from continuing a violation or threatening a violation or for the assessment of a civil penalty of not more than $5,000 as the court considers proper for each day of violation, or for both.

(b) In determining the amount of the civil penalty, consideration shall be given to:

(1) the permittee's history of previous violations under this chapter;

(2) the appropriateness of the penalty to the size of the business of the permittee;

(3) the seriousness of the violation, including irreparable harm to the environment and hazard to the health or safety of the public;

(4) whether the permittee was negligent; and

(5) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notice of the violation.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.2661. ADMINISTRATIVE PENALTY. (a) If a person violates a permit of this chapter and the violation results in pollution of the air or water of this state or poses a threat to the public safety, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations of this chapter, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the permittee or person charged.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2662. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 131.2661 of this code has been given an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings under this chapter.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2663. PAYMENT OF PENALTY; REFUND. (a) On the issuance of notice or an order finding that a violation has occurred, the commission shall inform the person charged within 30 days of the proposed amount of the penalty.

(b) Within the 30-day period immediately following the day on which the notice or order is issued, the person charged with the penalty shall pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the commission for

placement in an escrow account.

(c) If through administrative or judicial review of the proposed penalty it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall, within the 30-day period immediately following that determination, remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.2664. RECOVERY OF PENALTY. Civil penalties owed under Sections 131.2661-131.2663 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1409, ch. 286, Sec. 2, eff. Aug. 29, 1983.

Sec. 131.267. CRIMINAL PENALTY FOR VIOLATING PERMITS AND ORDERS. A person who wilfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, on conviction by a district court, shall be punished by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.268. CRIMINAL PENALTY FOR CORPORATE PERMITTEE. If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under

Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.269. CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, on conviction by a district court, is punishable by a criminal penalty of not more than $10,000 or by imprisonment for not more than one year or by both.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 131.270. RECOVERY OF CIVIL PENALTIES. (a) The commission may request the attorney general to institute a suit to recover civil or criminal penalties or to obtain injunctive relief or for both as provided in Sections 131.265 through 131.269 of this code.

(b) Suit shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER H. DISCHARGES

Sec. 131.301. DISCHARGE RULES, ORDERS, AND PERMITS. To prevent the pollution of surface and subsurface water in the state, the commission has the exclusive authority to adopt rules and may issue

orders and permits relating to the discharge or runoff of waste or any other substance or material from any permitted uranium exploration activity. Notwithstanding any provision of any other section of this chapter, a rule adopted, order issued, or permit issued by the commission under this subchapter shall be administered and enforced solely in the manner provided by this subchapter by the rule, order, or permit, or by Chapter 2001, Government Code.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 3, eff. September 1, 2007.

Sec. 131.302. ACCESS TO PROPERTY AND RECORDS. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions associated with any uranium exploration activity and related to the quality of water in the state, to inspect and investigate conditions related to the development of rules, orders, or permits issuable by the commission under this subchapter, to monitor compliance with any rule, order, or permit issued by the commission under this subchapter, or to examine and copy, during reasonable working hours, any records required to be maintained under any rule, order, or permit issued by the commission under this subchapter. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.303. INJUNCTIVE RELIEF AND CIVIL PENALTY. If a person violates or threatens to violate a rule, order, or permit issued by the commission under this subchapter, the commission may request the attorney general to institute an action to obtain a permanent or temporary injunction, temporary restraining order, or other appropriate order enjoining the violation or threatened violation, or to recover a civil penalty of not more than $10,000 a day for each

violation or threatened violation, or for both injunctive relief and civil penalty. The action shall be brought in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.304. ADMINISTRATIVE PENALTY. A person who violates a rule, order, or permit issued by the commission under this subchapter may be assessed a civil penalty by the commission. The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments. In determining the amount of the penalty, the commission shall consider the permittee's history of previous violations, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person charged. The penalty shall be assessed, recovered, and contested in accordance with the procedures provided in Sections 131.2662-131.2664 of Subchapter G of this chapter.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

Sec. 131.305. CRIMINAL PENALTY. A person who knowingly, willfully, or with criminal negligence violates a rule, order, or permit issued by the commission under this subchapter commits an offense that is punishable by a fine of not more than $10,000 a day for each violation. Venue for prosecution of an alleged violation is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1985, 69th Leg., ch. 921, Sec. 7, eff. June 15, 1985.

SUBCHAPTER I. PERMITS FOR EXPLORATION ACTIVITIES

Sec. 131.351. APPLICABILITY OF SUBCHAPTER. (a) If this subchapter conflicts with other law, this subchapter controls.

(b) Sections 131.037, 131.038, 131.039, 131.040, 131.041, 131.042, 131.043, 131.044, and 131.045 do not apply to exploration activity subject to an exploration permit issued under this

subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.352. EXPLORATION PERMITS. (a) A person may not conduct exploration activity unless the person holds an exploration permit issued by the commission.

(b) An exploration permit issued by the commission may contain provisions and conditions necessary to implement the policies of this subchapter. The commission shall adopt rules governing the amendment, revocation, transfer, or suspension of an exploration permit.

(c) A person may conduct exploration activities under an exploration permit issued by the commission until the term expires or may apply for a new exploration permit issued under this subchapter if:

(1) the person has been exploring under an exploration permit issued before June 1, 2007; or

(2) the person has a pending application on file before June 1, 2007, and is issued the exploration permit after that date.

(d) On expiration of an exploration permit held by a person described by Subsection (c)(1) or (2), the person may apply for an exploration permit renewal under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.353. SCOPE OF EXPLORATION PERMIT. (a) An exploration permit may govern all activities associated with determining the location, quantity, or quality of uranium deposits.

(b) An exploration permit must contain provisions to govern:

(1) locating, drilling, plugging, and abandoning exploration holes;

(2) casing exploration holes for use in the exploration process;

(3) using cased exploration wells for rig supply purposes; and

(4) plugging and abandoning cased exploration wells.

(c) Except as provided by Section 131.354, a cased exploration well subject to an exploration permit issued under this subchapter is exempt from regulation by another agency, governmental entity, or political subdivision if the well is:

(1) used for exploration; or

(2) used for rig supply purposes.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.354. COMMISSION JURISDICTION. (a) The commission has jurisdiction over uranium exploration holes and cased exploration wells completed under an exploration permit issued under this subchapter until:

(1) exploration holes and cased exploration wells are properly plugged and abandoned; or

(2) cased exploration wells are:

(A) registered with the Texas Commission on Environmental Quality; or

(B) included in an area permit issued by the Texas Commission on Environmental Quality under Chapter 27, Water Code.

(b) A well described by Section 131.353(c) is subject to a groundwater conservation district's rules regarding registration of wells if:

(1) the well is located in the groundwater conservation district and the well is used for monitoring purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to the exploration permit and completed under the exploration permit issued under this subchapter exceeds 40 acre feet in one year.

(c) A well described by Section 131.353(c) is subject to a groundwater conservation district's rules for registration, production, and reporting if:

(1) the well is located in the groundwater conservation district and the well is used for rig supply purposes; and

(2) the cumulative amount of water produced from the wells located inside the area subject to the exploration permit and completed under the exploration permit issued under this subchapter exceeds 40 acre feet in one year.

(d) Each month, the holder of an exploration permit governing a well described by Section 131.353(c) and located in a groundwater conservation district shall report to the district the total amount of water produced from each well described by Section 131.353(c) and located inside the area subject to the exploration permit.

(e) Each groundwater conservation district shall use the number of acres described in the exploration permit in determining any district production requirements.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.355. APPLICATION FEES. (a) The commission may impose an application fee to recover the costs of administering this subchapter.

(b) Section 131.231 does not apply to a fee imposed under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.356. NOTIFICATION BY COMMISSION. (a) At the time the commission receives an application for an exploration permit, the commission shall provide written notice of the exploration permit application to:

(1) each groundwater conservation district in the area in which the permitted exploration will occur;

(2) the mayor and health authority of each municipality in the area in which the permitted exploration will occur;

(3) the county judge and health authority of each county in the area in which the permitted exploration will occur; and

(4) each member of the legislature who represents the area in which the proposed exploration will occur.

(b) At the time the commission issues an exploration permit under this subchapter, the commission shall provide written notice of the exploration permit to:

(1) each groundwater conservation district in the area in which the permitted exploration will occur;

(2) the mayor and health authority of each municipality in

the area in which the permitted exploration will occur;

(3) the county judge and health authority of each county in the area in which the permitted exploration will occur; and

(4) each member of the legislature who represents the area in which the proposed exploration will occur.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

Sec. 131.357. GEOLOGIC, HYDROLOGIC, WATER QUALITY, AND WELL INFORMATION. (a) A person issued an exploration permit under this subchapter that authorizes exploration in a groundwater conservation district shall provide to the district:

(1) pre-exploration water quality information from:

(A) each existing well located in the district that is tested by the person before exploration; and

(B) the following wells, as applicable:

(i) each existing well located inside the area subject to the exploration permit, if there are fewer than 10 existing wells located inside that area; or

(ii) 10 existing wells that are distributed as evenly as possible throughout the area subject to the exploration permit, if there are at least 10 existing wells located inside that area;

(2) pre-mining water quality information from:

(A) each existing well in the jurisdiction of the groundwater conservation district that the person tests during exploration; and

(B) cased exploration wells completed under the exploration permit issued under this subchapter; and

(3) well logs that do not contain confidential information as described by Section 131.048.

(b) A person may take not more than 90 days after the person receives the final information to perform standard quality control and quality assurance procedures before submitting the information as required by Subsection (a).

(c) If the commission issues to a person an exploration permit under this subchapter that governs wells described by Section 131.353(c) that are located inside a groundwater conservation

district, the person shall provide to the district:

(1) the person's name, address, and telephone number; and

(2) the following information with regard to the wells described by Section 131.353(c):

(A) well completion information for each well in the district;

(B) the location of each well in the district, including a legal description and the acreage of the property where the well is located;

(C) verification that each well will be used for an industrial purpose; and

(D) the type and capacity of the pump used in each well.

Added by Acts 2007, 80th Leg., R.S., Ch. 1117 (H.B. 3837), Sec. 6, eff. September 1, 2007.

CHAPTER 132. INTERSTATE MINING COMPACT

Sec. 132.001. ADOPTION OF COMPACT. The Interstate Mining Compact is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form provided in Section 132.002 of this code.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.002. TEXT OF COMPACT. The Interstate Mining Compact reads as follows:

INTERSTATE MINING COMPACT

ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of

mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) advance the protection and restoration of land, water, and other resources affected by mining;

(2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources;

(5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in

order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) the protection of the public and the protection of adjoining and other landowners from damage to their land and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(b) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;

(c) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined land;

(d) the prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV. POWERS

In addition to any other powers conferred on the Interstate Mining Commission established by Article V of this compact, such commission shall have power to:

(a) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and patterns of community or regional development or change;

(b) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

(c) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(d) gather and disseminate information relating to any of the matters within the purview of this compact;

(e) cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact;

(f) consult, on the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(g) study and make recommendations with respect to any practice, process techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations;

(h) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV(c), IV(g), and IV(h) of this compact, or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph or Article V(g), V(h), or VII of this compact, shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other

governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that

party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) of this compact, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become

effective as to any other state on its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.003. ESTABLISHMENT AND DUTIES OF TEXAS MINING COUNCIL. The Texas Mining Council is established in the office of the governor and shall perform the duties of the advisory board provided in Section (a), Article V of the Interstate Mining Compact.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.004. MEMBERSHIP OF TEXAS MINING COUNCIL. (a) The Texas Mining Council is composed of 11 members appointed by the

governor.

(b) Each member of the Texas Mining Council shall be a member of the general public who has demonstrated a continuing interest in conservation matters, the head of a state agency, board, or commission, or a representative of the mining industry.

(c) Of the 11 members of the Texas Mining Council, at least three shall be members of the general public who have demonstrated an interest in conservation matters, at least three shall be representatives of the mining industry, and at least two shall be heads of state agencies, boards, or commissions.

(d) The service of members who are heads of state agencies, boards, or commissions is in addition to their other duties.

(e) A person serving as a member of the Texas Mining Council who is the head of a state agency, board, or commission ceases to be a member of the council if he ceases to be head of a state agency, board, or commission.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0041. LIMITATIONS ON COUNCIL MEMBERSHIP. (a) A member or employee of the council may not be an officer, employee, or paid consultant of a trade association for an industry that is engaged in any of the types of mining defined by Section (a), Article II of the Interstate Mining Compact.

(b) A person is not eligible for appointment as a public member of the council if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization related to the field of mining as defined by Section (a), Article II of the Interstate Mining Compact; or

(2) has, other than as a consumer, a financial interest in a business entity related to the field of mining as defined by Section (a), Article II of the Interstate Mining Compact.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.0042. REMOVAL OF COUNCIL MEMBERS. (a) It is a ground

for removal from the council if a member:

(1) does not have at the time of appointment the qualifications required by Section 132.004 of this code for appointment to the council;

(2) does not maintain during the service on the council the qualifications required by Section 132.004 of this code for appointment to the council; or

(3) violates a prohibition established by Section 132.0041 of this code.

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

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.005. TERMS OF OFFICE. Members of the Texas Mining Council shall serve for terms of two years.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0051. COUNCIL CHAIRMAN. The member of the council selected as the governor's alternate under Section (a), Article V of the Interstate Mining Compact serves as chairman of the council.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

Sec. 132.006. COMPENSATION AND TRAVEL EXPENSES. (a) The members of the Texas Mining Council are not entitled to compensation for their services.

(b) The members of the Texas Mining Council are entitled to receive actual expenses incurred for attendance at council meetings or attendance at meetings of the Interstate Mining Commission as alternate for the governor.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 132.007. MEMBERSHIP IN EMPLOYEES RETIREMENT SYSTEM. (a) The Employees Retirement System of Texas may enter into agreements with the Interstate Mining Commission for participation in the retirement system and other benefit programs for state employees administered by the agency or agencies.

(b) An agreement made under this section shall provide, as nearly as possible, for rights, contributions, obligations, and benefits comparable to those accorded employees of this state participating in or benefiting from the program involved.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.008. FILING BYLAWS AND AMENDMENTS. A copy of the bylaws and all amendments to the bylaws of the Interstate Mining Commission promulgated under Section (i), Article V of the Interstate Mining Compact shall be filed in the office of the Secretary of State.

Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 132.0081. ANNUAL REPORT. On or before October 1 of each year, the office of the Interstate Mining Compact Commissioner for Texas shall prepare and file with the presiding officer of each house of the legislature a complete and detailed written report describing activities of the office relating to this state's participation in the Interstate Mining Compact and accounting for all funds received and disbursed by the office during the preceding year. The report must be included as part of the annual financial report of the governor's office.

Added by Acts 1983, 68th Leg., p. 2913, ch. 495, Sec. 1, eff. Aug. 29, 1983.

CHAPTER 133. QUARRY SAFETY
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 133.001. SHORT TITLE. This chapter may be cited as the Texas Aggregate Quarry and Pit Safety Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.002. PURPOSE. The Legislature of the State of Texas finds that:

(1) protection of the public good by requiring safety devices for certain aggregate quarries and pits and regulation of public access to such aggregate quarries and pits, with reasonable, fair, and certain laws, accompanied by civil penalties for failure to obey such laws, are essential to protect the public good and welfare;

(2) to carry out the stated purpose of this Act, a method must be provided to secure usable information concerning the definition, existence of, operation of, and abandonment of aggregate quarries and pits;

(3) to provide for a centralized, easily understood method of requiring safety devices and the administration thereof by one agency of this state to the exclusion of any other governmental entity is essential to the smooth workings of any law having statewide impact.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.003. DEFINITIONS. In this chapter:

(1) "Abandoned" means having relinquished all right, title, claim, and possession with the intent of never again claiming a future right or title or resuming possession.

(2) "Aggregates" includes any commonly recognized construction material originating from a quarry or pit by the disturbance of the surface, including dirt, soil, rock asphalt, clay, granite, gravel, gypsum, marble, sand, shale, stone, caliche, limestone, dolomite, rock, riprap, or other nonmineral substance.

(3) "Barrier" means an object of substantial construction that will obstruct, restrain, and prevent the normal passage of persons or vehicular traffic and may include guardrails, fences, or berms or barricades composed of consolidated material or overburden.

(4) "Berm" means a ridge of refuse, overburden, consolidated material, or other material in a lengthened elevation designed to act as a dike or barrier, capable of moderating or limiting the force of a vehicle in order to impede the passage of the vehicle.

(5) "Commission" means the Railroad Commission of Texas.

(6) "Consolidated material" means material of sufficient hardness or ability to resist weathering and to inhibit erosion or sloughing.

(7) "Division" means the Surface Mining and Reclamation Division, Railroad Commission of Texas, or such department, bureau, or commission as may lawfully succeed to the powers and duties of such division.

(8) "Director" means the director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the director's representative.

(9) "Federal act" means the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87), and any amendment thereof.

(10) "Fund" means the abandoned mine reclamation fund established pursuant to Section 401 of the federal act, and any amendment thereof.

(11) "Guardrail" means a system of posts and metal rails as defined by the Texas Department of Transportation.

(12) "Inactive quarry or pit" means a site or any portion of a site that although previously in aggregate production is not currently being quarried by any ownership, lease, joint venturer, or some other legal arrangement.

(13) "In hazardous proximity to a public road" means that distance beginning 200 feet from the nearest roadway edge of a public road or highway to the pit perimeter.

(14) "Operator" means any person, partnership, firm, or corporation engaged in and responsible for the physical operation and control of the extraction of aggregates.

(15) "Overburden" means all materials displaced in an aggregate extraction operation that are not or reasonably would not be expected to be removed from the affected area.

(16) "Owner" means any person, partnership, firm, or corporation having title, in whole or in part, to the land on which an aggregate operation exists or has existed.

(17) "Pit" means an open excavation not less than five feet below the adjacent and natural ground level from which aggregates have been or are being extracted.

(18) "Public road or right-of-way" means every way publicly maintained or any part thereof as defined by Section 541.302, Transportation Code, and the decisions thereunder.

(19) "Quarrying" means the current and ongoing surface excavation and development without shafts, drafts, or tunnels, with or without slopes, for the extraction of aggregates from natural deposits occurring in the earth.

(20) "Quarry" means the site where aggregates are being or have been removed or extracted from the earth to form the pit, including the entire excavation, stripped areas, haulage ramps, the land immediately adjacent thereto upon which the plant processing the raw materials is located, exclusive of any land owned or leased by the responsible party not being currently used in the production of aggregates.

(21) "Refuse" means all waste material directly connected with the production, cleaning, or preparation of aggregates that have been produced by quarrying.

(22) "Responsible party" means the operator, lessor, or owner of lessee as may be subject to the provision of Chapters 2 and 3 of this Act.

(23) "Ridge" means a lengthened elevation of overburden created in the aggregate production process.

(24) "Roadway" means the part of the public road intended for vehicular traffic that consists of an improved driving surface constructed of concrete, asphalt, compacted soil, rock, or other material.

(25) "Setback distance" means from the outer right-of-way line of a public road or highway up to a distance of 25 feet.

(26) "Site" means the tract of land on which is located a pit and includes the immediate area on which the plant used in the extraction of aggregates is located.

(27) "Unacceptable unsafe location" means a condition where the edge of a pit is located within 200 feet of a public roadway intersection in a manner which, in the judgment of the commission:

(A) presents a significant risk of harm to public motorists by reason of the proximity of the pit to the roadway intersection; and,

(B) has no naturally occurring or artificially constructed barrier or berm between the road and pit that would likely prevent a motor vehicle from accidentally entering the pit as the result of a motor vehicle collision at or near the intersection; or which,

(C) in the opinion of the commission, is also at any other location constituting a substantial dangerous risk to the driving public, which condition can be rectified by the placement of berms, barriers, guardrails, or other devices as prescribed by this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 1, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 165, Sec. 22(56), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 30.231, eff. Sept. 1, 1997.

SUBCHAPTER B. AUTHORITY OF COMMISSION

Sec. 133.011. GENERAL AUTHORITY OF THE COMMISSION. To accomplish the limited purposes of this chapter, the commission may:

(1) with proper notice to all parties affected, adopt rules and regulations consistent with the provisions of this chapter and issue orders necessary to implement and enforce this chapter;

(2) conduct research necessary for the discharge of its duties under this chapter;

(3) collect and make available to the public information relating to the inventory and classification of quarries, including maps and other technical data;

(4) apply for, accept, receive, and administer grants, gifts, loans, or other funds from any source; and

(5) hold public hearings, take written sworn testimony, hear witnesses upon oath, and consider reports in regard to the classifications of pits within the definitions of hazardous proximity to a public road and unacceptable unsafe location, issuing rules and orders in relation thereto.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.012. INVENTORY OF ACTIVE, INACTIVE, AND ABANDONED QUARRIES AND PITS. (a) The commission shall inventory, classify,

and maintain a log according to the degree of hazard, proximity to public roads, age, and current use of all existing, inactive, or abandoned quarries that have a pit perimeter that is in hazardous proximity to a public road, and those pits that are in an unacceptable unsafe location.

(b) The commission shall keep a current log of all quarries that are required to be inventoried under Subsection (a) of this section, including such quarries and pits for which initial operations begin after June 30, 1991.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.013. DETERMINATION OF STATUS. After notice and hearing, the commission may determine whether a quarry or pit has been abandoned, is active, or is inactive.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C. PERSON RESPONSIBLE FOR QUARRY OR PIT

Sec. 133.021. PERSONS RESPONSIBLE FOR QUARRY OR PIT. (a) For the purposes of this chapter, the person responsible for a quarry or pit is the current operator of the quarry or pit, except that if a quarry or pit was abandoned on or before January 1, 1991, or became inactive before that date and has not resumed operations, or if no operator exists, then the owner in which the pit exists is the person responsible.

(b) Where a conflict arises in identifying a person responsible for the pit, the commission may hold a public hearing.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER C-1. INITIAL REPORTING REQUIREMENTS

Sec. 133.031. REPORT OF ABANDONED OR INACTIVE QUARRY OR PIT. (a) On or before March 1, 1992, the person responsible for an abandoned quarry or pit shall report to the commission.

(b) On or before March 1, 1992, the person responsible for a quarry or pit that became inactive before January 1, 1991, and did not resume operations before June 30, 1991, shall report to the

commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.032. REPORT OF AN ACTIVE QUARRY OR PIT. On or before October 1, 1991, the person responsible for a quarry or pit that is active on June 30, 1991, shall report to the commission.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.033. FORM AND CONTENT OF REPORT. (a) Each report under this chapter must show the location, age, operational status, and current use of the quarry or pit to which the report applies, and the report form shall be concise and limited to the information necessary to effect the inventory, and be of not more than five pages, containing only the information prescribed in Section 133.046 of this code.

(b) Only a single report under this subchapter is required when joint owners or operators or a combination of either exists.

(c) Only a single report under this subchapter is required for each owner or operator having multiple pit locations within the state.

(d) Only one accurate report relating to each quarry or pit is required by this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER D. SAFETY AND CERTIFICATION

Sec. 133.041. BARRIERS REQUIRED. (a) A person responsible for an active pit must construct a barrier or other device required by this code between a public road adjoining the site and a pit, provided the pit is in hazardous proximity to the public road.

(b) A person responsible for an abandoned or inactive pit must construct a barrier or other device required by this code between a public road adjoining the site and the pit, provided that the pit is in hazardous proximity to a public road and in an unacceptable unsafe location. The commission may grant a waiver from the barrier requirement if the person responsible for the abandoned or inactive

pit submits an application to the commission showing that:

(1) a governmental entity obtained a right-of-way and constructed a public road within 200 feet of the abandoned or inactive pit before August 26, 1991; and

(2) the pit has remained abandoned or inactive since the road was constructed.

(c) The responsible party may choose to slope the sidewalls of a pit in place of constructing a berm or barrier, provided that in the opinion of the responsible party such corrective measure better serves the public safety and provided that the slope shall not exceed 30 degrees from the horizontal.

(d) The barrier or other device must be completed not later than the 90th day after the day on which the person responsible for the quarry or pit receives a notice of approval under Section 133.048(b) of this code. An additional time of not more than 60 days may be granted by the commission for good cause shown. If the responsible person must obtain an easement before constructing the barrier or other device, the commission may grant additional reasonable time to complete the barrier or other device.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 2, eff. Sept. 1, 1993.

Sec. 133.042. CONSTRUCTION STANDARDS. (a) A barrier constructed under Section 133.041 of this code must:

(1) reach a height that the commission determines that under the circumstances will obstruct, restrain, and prevent the normal passage of vehicular traffic;

(2) be of substantial construction suitable for impact under normal driving conditions; and

(3) have openings to the extent necessary for travel on the premises and for public road drainage, although such drainage paths must be covered with protective material, substantial enough to turn away motor vehicular traffic that normally travels the adjacent public road.

(b) The commission may not adopt construction standards for barriers under Subsection (a) that are more stringent than the Texas Department of Transportation standards.

(c) In the event the commission determines that the pit

location as detailed in the quarry safety plan or other application will contain substantial soil types of such density and other factors that will have a high probability of holding or impounding water, when the pit is operating, inactive, or abandoned, wherein the impoundment of water poses a definite and determinable unreasonable risk to human health and safety as set out in this code, the commission may require the responsible party operating soil, dirt, clay, gravel, sand, caliche and clay pits to slope the sidewalls as an additional requirement to obtain a safety certificate or to alter the berm or barrier.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 3, eff. Sept. 1, 1993.

Sec. 133.043. CONSTRUCTION COSTS. (a) The commission shall adopt and implement rules, standards, or procedures necessary to obtain funds that are or may become available under the federal act, or any federal or state law, for the cost of constructing barriers required by this code.

(b) The person responsible for the pit shall pay the cost of constructing a barrier to the extent that person is unable to obtain funds available under any state, municipal, or federal source.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.044. PROHIBITION AGAINST OPENING PITS. (a) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter will be less than 25 feet from the outer right-of-way line of any public road or highway ("the setback distance").

(b) From and after November 1, 1991, no person responsible may open a new pit on a site for the extraction of aggregates in this state wherein the pit perimeter is in hazardous proximity to a public road without first filing a quarry safety plan detailing how the applicant intends to comply with the safety provisions of this code in the opening and closing of the pit.

(c) The quarry safety plan must:

(1) set out the information required in Section 133.046 et seq. of this code; and

(2) be filed by the applicant at least 60 days prior to the opening of the pit; and

(3) contain a statement as to the yearly progress of the encroachment of the pit perimeter within the hazardous proximity to a public road, if any, and the type of berm or barrier or other device required by this code that will be erected; and

(4) be in writing, certified and sworn to the applicant; and

(5) contain any other information relating to safety matters as the commission by rule or regulation deems essential to the implementation of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.045. SAFETY CERTIFICATE REQUIRED. (a) A safety certificate is required for an active, inactive, or abandoned quarry or pit that is located in hazardous proximity to a public road or is in an unacceptable unsafe location, excluding an inactive or abandoned quarry or pit that receives a written waiver from the commission.

(b) From and after November 1, 1991, unless a person responsible for a quarry or pit has obtained from the commission a certificate that a quarry or pit complies with this subchapter and rules or orders adopted under this subchapter, and subject to Subsection (c) of this section, the person responsible may not:

(1) open a new pit in hazardous proximity to a public road; and

(2) locate a pit in an area wherein it is in an unacceptable unsafe location; or

(3) reopen, operate, or abandon a quarry or pit that is in hazardous proximity to a public road and in an unacceptable unsafe location; and

(4) provided, however, that the person responsible must have received a notice from the commission that the quarry or pit requires the operator to obtain a safety certificate, before that person is prohibited from operating or maintaining the quarry or pit without a safety certificate.

(c) Any person responsible who, on November 1, 1991, is utilizing a portion of a site for quarrying operations, including the

stockpiling, sale, or processing of aggregates or a combination thereof, or who has a current, valid, or outstanding agreement or legal right to develop, utilize, or quarry the property, shall be responsible for obtaining a safety certificate limited to that specific pit area he is using or excavating or intends to use or excavate.

(d) A person responsible for a quarry or pit may operate the pit during a period that is described by Subsection (a) or (c) of Section 133.052 of this code.

(e) In the event a quarry or pit previously not within the proscribed distance in the definition of "in hazardous proximity to a public road" and not initially within the purview of "unacceptable unsafe location" later becomes subject to regulation as the result of an expansion or relocation of an existing public road or construction of a new public road, the person or entity responsible for the expansion or relocation of the existing public road or construction of a new public road shall be liable to report the same to the commission within 90 days of the date the expansion, relocation, or construction is finally accomplished.

(f) The commission shall provide such rules and regulations to require the person or entity responsible for the expansion or relocation to erect berms or barriers.

(g) For the purposes of this subsection, the person or entity responsible for the erection of berms or barriers is that person or entity having the original and initial legal authority and responsibility for the initiation and contracting of the expansion or relocation.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 4, eff. Sept. 1, 1993.

Sec. 133.046. FORM AND CONTENTS OF APPLICATION. (a) The commission by rule shall prescribe the form of an application for a safety certificate.

(b) An application for a safety certificate must contain not more than:

(1) the name, address, and telephone number of the person responsible for the quarry or pit;

(2) the name, address, and telephone number of the owner or

owners if different from the person responsible for the quarry or pit;

(3) the type of quarrying activities, if any, occurring on the site;

(4) a brief description of the site, including the acreage outside and inside the pit;

(5) the distance of each pit perimeter from the nearest roadway edge of each public road that the site adjoins and the nearest intersection of any public or private road or driveway;

(6) the depth in feet, below the top of the pit highwall located between the pit and the roadway, of the deepest excavation in the pit;

(7) a description of and a construction plan for any barrier or other device allowed in this code to be constructed, specifying the material to be used and the expected date of completion; and

(8) any other information or condition that, in the opinion of the operator or owner, constitutes an unacceptable unsafe location, as defined or required by this Act that is absolutely essential to the purposes of this Act.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 5, eff. Sept. 1, 1993.

Sec. 133.047. APPLICATION FEE. (a) The commission may require the payment of an application fee.

(b) The commission shall set the fee in an amount reasonably necessary to cover the commission's cost of carrying out this chapter, but not more than:

(1) $500 for an active aggregate quarry or pit;

(2) $500 for an inactive or abandoned aggregate quarry or pit unless the responsible party is a governmental entity in which case the fee shall be no more than $350.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 6, eff. Sept. 1, 1993.

Sec. 133.048. REVIEW OF APPLICATION. (a) Not later than the 10th day after the day on which an application for a safety

certificate is received, the commission shall review the application and the plan and determine if each complies with this subchapter, and with rules or orders adopted under this subchapter, and issue such findings and conclusions as may be necessary.

(b) If the application and plan comply with this subchapter, and rules or orders adopted under this subchapter, the commission must approve the application and notify the applicant in writing of the commission's decision.

(c) If the commission determines that an application or plan does not comply with this subchapter and rules or orders adopted under this subchapter, the commission must notify the applicant in writing of the commission's decision, specifying any defects.

(d) Any notices required under Subsections (b) and (c) of this section must be mailed to the applicant certified mail, postage prepaid, return receipt requested, not later than the fifth day after the day on which the commission approves or disapproves the application.

(e) An applicant who receives notice of denial under Subsections (c) and (d) of this section may submit, not later than the 30th day after the day on which the notice is received, a modified application or plan.

(f) Not later than the fifth day after the day on which the commission receives a modified application or plan, the commission must approve or deny the modified application or plan and notify the applicant in writing of the commission's decision.

(g) The commission shall first review applications for sites that have been abandoned and that are within the setback distances.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.049. INSPECTION OF BARRIERS. Within 15 days of the time in which construction of barriers required by Section 133.041 of this code and described in an approved application is required to be completed, the commission may inspect those barriers to determine whether they meet the requirements of this subchapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.050. ISSUANCE OF CERTIFICATE. (a) If, after

inspection, the commission determines that the barriers described in an approved application conform with the plan and comply with this subchapter, and the rules or orders adopted under this subchapter, the commission must issue a safety certificate to the person responsible for the pit.

(b) If, after inspection, the commission determines that a barrier does not comply with this subchapter or a rule or order adopted under this subchapter, the commission shall give the applicant written notice of any defects in that barrier and shall allow the applicant a reasonable time, not to exceed 60 days from the day notice is received, to cure the defects.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.051. TRANSFER OF CERTIFICATE AFTER TRANSFER OF TITLE. (a) A person holding a safety certificate has the full right, power, and authority to transfer the certificate upon the sale, lease, or other transfer of title to the site, provided the new owner, operator, lessor or lessee, or party in interest files a written affidavit that:

(1) all barriers between a pit and the nearest roadway edge of any public road comply with this subchapter, and rules and orders adopted by this subchapter; and

(2) there will be no change, on or after the day of the transfer of title or operation, in:

(A) the condition or location of a barrier; and

(B) the distance of a pit perimeter from:

(i) the nearest public road; and

(ii) the nearest intersection of a public road and a private road or driveway.

(b) The transfer affidavit must be filed not later than the 30th day after the day on which the transfer of title to or operation of the quarry or pit occurs.

(c) Except as provided by Section 133.053(a) of this code, the commission must process and approve a transfer of a safety certificate not later than the 10th day after the day on which the commission receives a completed transfer affidavit.

(d) The commission may require the payment of a reasonable fee for processing the transfer affidavit, not to exceed the actual

administrative costs of receipt and processing, which amount shall not be more than $250.

(e) The hypothecating, mortgaging, or other transfer of equitable title or a pledge of any assets to creditors of the operator or owner shall not require the filing of a transfer affidavit.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 7, eff. Sept. 1, 1993.

Sec. 133.052. RECERTIFICATION AFTER TRANSFER OF TITLE. (a) Unless proper transfer affidavit is filed pursuant to this subchapter, or an application for an amended certificate as required by Subsection (b) of this section is pending, an existing safety certificate expires on the 90th day after the day on which a sale, lease, or other transfer of title to or operation of the quarry or pit for which the certificate was issued occurs.

(b) To obtain an amended or new safety certificate, a new owner, operator, lessor, or lessee must submit an application and plan as required by Section 133.046 of this code not later than the 30th day after the day on which the transfer of title to the quarry or pit occurs or a change in the activities of the quarry or pit necessitates.

(c) If an application for a new certificate has been submitted as required by Subsection (b) of this section, the existing safety certificate continues in effect until the commission's decision either approving or disapproving the new or amended certificate is issued and becomes final.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.053. DENIAL OR REVOCATION OF CERTIFICATE. (a) At its option, the commission may not issue or approve the transfer of a certificate to a person who has violated this chapter or a rule or order adopted under this chapter.

(b) The commission may revoke or disapprove the transfer of a safety certificate issued under this subchapter only if, after notice and hearing, the commission determines that the holder of the certificate has violated this chapter or a rule or order adopted

under this chapter.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.054. CESSATION OF ACTIVE PIT OPERATIONS. (a) The responsible party who plans or intends to cease active operations in a quarry or pit subject to the provisions of this code shall, 60 days prior to cessation of operations, notify the commission of its intent and submit any additional plans the operator determines necessary to protect the public good and welfare after the cessation of operations. The commission may charge a fee for the actual costs of processing the notice, which fee shall not exceed $500.

(b) The commission shall have inspected the quarry and pit within 10 days after receipt of the notice in order to ensure compliance with the provisions of this chapter and any additional plans by the operator as may be submitted pursuant to Subsection (a) of this section.

(c) Upon inspection, the commission shall have 10 days to notify the operator of compliance, or lack thereof, and in the event of compliance shall issue a safety certificate pursuant to Section 133.050 of this code.

(d) In the event of noncompliance, the commission shall follow the procedures as set out in Section 133.048 et seq. of this code.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

SUBCHAPTER E. ENFORCEMENT AND PENALTIES

Sec. 133.081. NOTICE OF VIOLATION; TIME TO CURE. (a) On receipt of a complaint or a violation of this chapter or a rule or order adopted under this chapter or on its own motion, the commission must give the person responsible for the quarry or pit written notice of each alleged violation, including the applicable statutory reference, and rule or order so violated and its relation thereto, and the date, time, and place for a hearing.

(b) If, after notice and a hearing, the commission determines that a violation has occurred, the commission must make written findings of the actual or threatened violation and the required corrective work and shall prescribe by order a specific period, commensurate with the work to be done but not to exceed 90 days from

the date of the order, during which the corrective work must be done, unless an extension of time for good cause shown by the person responsible is granted by the commission.

(c) If the responsible party fails to perform corrective work required by the commission under Subsection (b) of this section within 120 days after notice is given to the responsible party, the commission may contract for the corrective work to be done at reasonable, customary, and ordinary costs applicable in the industry. Such costs shall be submitted within 30 days of the date the work is finished, and the responsible party shall have 60 days to pay the costs or appeal the decision. In the event the responsible party fails to pay the costs as presented or fails timely to contest or appeal the costs as presented by the commission, the commission shall have the right to impose such fine or injunction as is warranted, consistent with the provisions of Section 133.082 et seq.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.082. CIVIL PENALTY. (a) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than $500 or more than $5,000 for each act of violation on a first offense.

(b) A person or responsible party who violates this chapter or a rule or order adopted under this chapter after due notice is liable to the state for a civil penalty of not less than $1,000 or more than $10,000 for each act of violation on a second and subsequent offense.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.083. INJUNCTION. (a) The commission may enforce this chapter or a rule or order adopted under this chapter by injunction or other appropriate remedy.

(b) On application for injunctive or other relief and a finding that a person is violating or has violated this chapter or a rule or order adopted under this chapter, a court may grant the injunctive or other relief warranted by the facts.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.084. RECOVERY OF COSTS. A person responsible for a quarry or pit is liable to the state for customary, ordinary, and reasonable costs incurred by the commission in undertaking corrective or enforcement action under this chapter and for court costs and attorney's fees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.085. PROCEDURE. (a) At the request of the commission, the attorney general shall bring suit for injunctive or other relief, to recover a civil penalty or costs as provided by Section 133.082 or 133.084 of this code, or for both injunctive or other relief and to recover a civil penalty or costs.

(b) The action may be brought in the county in which the offending action has occurred or in the county in which the defendant resides or has a place of business.

(c) The provisions of this Act supersede any other municipal ordinance or county regulation that seeks to accomplish the same ends as set out herein.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.086. DISPOSITION OF PENALTIES AND COSTS. Money collected under Section 133.082 or 133.084 of this code shall be deposited in the state treasury to the credit of the Texas aggregates quarry and pit safety fund.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.087. COMPLIANCE. Compliance with this Act shall be admissible as evidence in any legal proceeding.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.

Sec. 133.088. GOVERNMENTAL LIABILITY. The provisions of this

act shall not be construed to impose any liability upon a state governmental entity or county, or their officers or employees.

Added by Acts 1991, 72nd Leg., ch. 668, Sec. 1, eff. Aug. 26, 1991.
Amended by Acts 1993, 73rd Leg., ch. 693, Sec. 8, eff. Sept. 1, 1993.

SUBCHAPTER F. AUTHORITY TO REGULATE QUARRIES AND PITS IN CERTAIN COUNTIES

Sec. 133.091. COUNTY AUTHORITY TO REGULATE. A county with a population of 3.3 million or more may adopt regulations requiring the placement of signs or barriers on aggregate quarries and pits.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 107, eff. September 1, 2011.

Sec. 133.092. AREA SUBJECT TO REGULATION. A regulation adopted under this subchapter applies only in the unincorporated area of the county.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

Sec. 133.093. CONFLICT WITH COMMISSION RULE. A county may not adopt regulations for aggregate quarries and pits which are regulated by the commission.

Added by Acts 1993, 73rd Leg., ch. 693, Sec. 9, eff. Sept. 1, 1993.

SUBCHAPTER G. AUTHORITY TO REGULATE QUARRIES IN CERTAIN MUNICIPALITIES

Sec. 133.121. USE OF MUNICIPAL QUARRY SITE LOCATED IN DIFFERENT MUNICIPALITY. (a) This section applies only to a rock quarry:

(1) owned or leased by a municipality with a population of more than 650,000 according to the 2000 federal decennial census;

(2) located in the boundaries of a municipality with a population of less than 50,000 according to the 2000 federal

decennial census; and

(3) any part of which is located within one mile of a residential property.

(b) Before the municipality that owns or leases the rock quarry may dispose of water treatment byproducts in the site of the quarry, the municipality must receive the consent of the governing body of the municipality in which the quarry is located.

(c) The municipality that owns or leases the rock quarry must receive the consent of the governing body of the municipality in which the quarry is located before entering into or extending a lease to operate the quarry.

(d) The governing body of the municipality in which the rock quarry is located may not provide consent under Subsection (b) or (c) if:

(1) that governing body determines that the health, safety, or welfare of the residents of the municipality may be negatively affected by the disposal of byproducts or operation of the quarry;

(2) the quarry site or the operation of the quarry fails to comply with the land use and zoning regulations of the municipality; or

(3) the quarry site or the operation of the quarry fails to correspond with the municipality's land use and development plans.

Added by Acts 2007, 80th Leg., R.S., Ch. 1259 (H.B. 2910), Sec. 1, eff. June 15, 2007.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

Sec. 133.901. DISTANCE BETWEEN PIT AND PROPERTY LINE. (a) Except as provided by Subsection (b), at the time quarrying is completed, the distance from the edge of the consolidated material of a pit that does not have lateral support to the property line of the nearest property that is not owned or leased by the operator may not be less than 50 feet.

(b) This section does not apply:

(1) to a pit if the operator and the adjacent property owner agree that the pit may be located closer to the property line;

(2) to an excavation constructed by a political subdivision to provide drainage or stormwater retention; or

(3) to a county with a population of 3.3 million or more.

Added by Acts 2001, 77th Leg., ch. 1051, Sec. 1, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 1017, Sec. 1, eff. Sept. 1, 2003.

CHAPTER 134. TEXAS SURFACE COAL MINING AND RECLAMATION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. SHORT TITLE. This chapter may be cited as the Texas Surface Coal Mining and Reclamation Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.002. FINDINGS AND DECLARATION OF POLICY. The legislature finds and declares that:

(1) the Congress of the United States has enacted the federal Act, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation in the United States;

(2) Section 101 of the federal Act contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states;

(3) Section 503 of the federal Act provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in that state by obtaining approval of a state program of regulation that demonstrates that the state is able to carry out the provisions and meet the purposes of that Act;

(4) Section 503 of the federal Act further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with that Act; and

(5) this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.003. PURPOSES. It is the purpose of this chapter:

(1) to prevent adverse effects to society and the environment from unregulated surface coal mining operations as defined by this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(4) to assure that reclamation of all land on which surface coal mining takes place occurs as contemporaneously as practicable with the surface coal mining, recognizing that extracting coal by responsible mining operations is an essential and beneficial economic activity;

(5) to assure that the coal supply essential to this state's energy requirements and to its economic and social well-being is provided and to strike a balance between environmental protection and agricultural productivity and this state's need for coal as an essential source of energy; and

(6) to promote the reclamation of mined areas left without adequate reclamation before the enactment of the federal Act and that continue, in their unreclaimed condition, substantially to degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.004. DEFINITIONS. In this chapter:

(1) "Affected person" means a person having an interest that is or may be affected.

(2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. The term does not include upland areas that are generally overlaid by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, or windblown deposits.

(3) "Applicant" means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

(4) "Approximate original contour" means the surface configuration achieved by backfilling and grading the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(5) "Coal" means all forms of coal and includes lignite.

(6) "Coal exploration operations" means the substantial disturbance of the surface or subsurface for or related to the purpose of determining the location, quantity, or quality of a coal deposit.

(7) "Commission" means the Railroad Commission of Texas.

(7-a) "Director" means the director, Surface Mining and Reclamation Division, Railroad Commission of Texas, or the director's representative.

(8) "Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.).

(9) "Imminent danger to the health or safety of the public" means the existence of a condition or practice or a violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the

time necessary for abatement.

(10) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive months in one location.

(11) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals that occur naturally in liquid or gaseous form.

(12) "Permit" means a permit to conduct surface coal mining and reclamation operations or underground mining operations issued by the commission.

(13) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land must be covered by an operator's bond as required by Subchapter F and readily identifiable by appropriate markers on the site.

(14) "Permit holder" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities under this chapter.

(15) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(15-a) "Previously mined land" means land that:

(A) was affected by surface coal mining operations occurring before August 3, 1977; and

(B) has not been reclaimed in accordance with this chapter.

(16) "Prime farmland" means land that the commission determines meets the criteria prescribed by the secretary of agriculture and published in the Federal Register, including moisture availability, temperature regime, chemical balance, permeability without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes. Land has not historically been used for the production of cultivated crops if:

(A) the land has been used as woodland or rangeland; or

(B) the only cultivation has been disking to:

(i) establish or help maintain bermuda grass used as forage; or

(ii) plant oats or rye for quick cover, to be used as forage and not as a grain crop.

(17) "Secretary of agriculture" means the secretary of the United States Department of Agriculture.

(18) "Secretary of the interior" means the secretary of the United States Department of the Interior.

(19) "Surface coal mining and reclamation operations" means surface coal mining operations and the activities necessary and incidental to the reclamation of those operations.

(20) "Surface coal mining operations" means:

(A) activities conducted on the surface of land in connection with a surface coal mine or subject to the requirements of Section 134.015 incidental to an underground coal mine, including excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; excluding the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this chapter; and

(B) the areas on which those activities occur or where those activities disturb the natural land surface, areas adjacent to land the use of which is incidental to any of those activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to those activities.

(21) "Unwarranted failure to comply" means the failure of a permit holder to prevent the occurrence of any violation of the

permit holder's permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit holder's permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(a), eff. Sept. 1, 1997.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 1, eff. May 27, 2011.
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 1, eff. June 17, 2011.

Sec. 134.005. EXEMPTIONS. (a) This chapter does not apply to the extraction of coal:
(1) by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner; or
(2) incidental to federal, state, or local government-financed highway or other construction under commission rules.
(b) Subsection (a)(1) does not exempt the noncommercial production of coal by in situ distillation or retorting, leaching, or another chemical or physical process or preparation.
(c) This chapter does not apply to surface coal mining and reclamation operations in existence before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(b), eff. Sept. 1, 1997.

Sec. 134.006. WATER RIGHTS. This chapter does not affect the right of a person under other law to enforce or protect the person's interest in water resources affected by a surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.007. CONFLICT OF INTEREST; OFFENSE. (a) An employee of the commission commits an offense if the employee knowingly:

(1) performs a function or duty under this chapter; and

(2) has a direct or indirect financial interest in an underground or surface coal mining operation.

(b) An offense under this section is punishable by:

(1) a fine of not more than $2,500;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.008. APPLICABILITY TO GOVERNMENTAL UNITS. An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(c), eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 134.011. GENERAL AUTHORITY OF COMMISSION. To accomplish the purposes of this chapter, the commission may:

(1) adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this chapter;

(2) issue permits under this chapter;

(3) conduct hearings under this chapter and Chapter 2001, Government Code;

(4) issue orders requiring an operator to take actions necessary to comply with this chapter or rules adopted under this chapter;

(5) issue orders modifying previous orders;

(6) issue a final order revoking the permit of an operator who has not complied with a commission order to take action required by this chapter or rules adopted under this chapter;

(7) order the immediate cessation of all or part of an ongoing surface coal mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and take other action or make changes in a permit that are reasonably necessary to avoid or alleviate those conditions;

(8) hire employees, adopt standards for employment, and hire or authorize the hiring of outside contractors to assist in carrying out this chapter;

(9) enter and inspect, in person or by its agents, a surface mining operation that is subject to this chapter to assure compliance with this chapter;

(10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) prepare and require permit holders to prepare reports;

(12) accept, receive, and administer grants, gifts, loans, or other money made available from any source for the purposes of this chapter;

(13) take the steps necessary for this state to participate to the fullest extent practicable in the abandoned land program provided by Title IV of the federal Act;

(14) take the actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the federal Act, including, if the federal agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the federal Act;

(15) contract with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out this chapter;

(16) establish a process, to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) enter into cooperative agreements with the secretary of the interior for the regulation of surface coal mining operations on federal land in accordance with the federal Act; and

(18) perform any other duty or act required by or provided

for in this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.012. JURISDICTION OF COMMISSION OVER SURFACE COAL, IRON ORE, AND IRON ORE GRAVEL MINING AND RECLAMATION OPERATIONS. (a) The commission has exclusive jurisdiction over:

(1) surface coal mining and reclamation operations in this state; and

(2) iron ore and iron ore gravel mining and reclamation operations in this state.

(b) This chapter governs iron ore and iron ore gravel mining and reclamation operations to the extent it can be made applicable.

(c) The jurisdiction conferred by Subsection (a)(2) does not extend to:

(1) a mining or reclamation activity in progress on or before September 1, 1985; or

(2) a mining operation or reclamation activity that is conducted solely on real property owned in fee simple by the person authorizing the operation or reclamation activity and that is confined to a single, contiguous tract of land, if:

(A) the activity is conducted in an area not larger than 20 acres;

(B) the depth of the mining operation is restricted to 30 inches or less; and

(C) the fee simple owner receives surface damages.

(d) This chapter does not authorize the commission to adjudicate property title or property rights disputes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.013. RULEMAKING AND PERMITTING. (a) The commission shall adopt rules pertaining to surface coal mining and reclamation operations required by this chapter.

(b) The process of making and amending rules and issuing permits is subject to Chapter 2001, Government Code.

(c) A rule or an amended rule adopted or a permit issued by the

commission may have different terms for particular conditions, types of coal being extracted, particular areas of the state, or other relevant or necessary conditions if the action taken is consistent with the general intent and purposes of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.014. COAL EXPLORATION OPERATIONS. (a) A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations. The rules shall require that before conducting the exploration, a person file with the commission notice of intent to explore and include with the notice:

(1) a description of the exploration area and the period of proposed exploration; and

(2) provisions for reclaiming, in accordance with the performance standards in Sections 134.091 through 134.109, the land disturbed in exploration, including provisions for reclamation of excavations, roads, and drill holes and for removal of necessary facilities and equipment.

(b) A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or a rule adopted under this section is subject to Sections 134.174 through 134.181.

(c) An operator may not remove more than 250 tons of coal under an exploration permit without the specific written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(d), eff. Sept. 1, 1997.

Sec. 134.015. SURFACE EFFECTS OF UNDERGROUND MINING. (a) The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the federal Act and regulations adopted under that Act by the secretary of the interior.

(b) This chapter applies to the regulation of the surface effects of underground mining operations as established by Section

516 of the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.016. DEVELOPMENT OF PROCESS FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING. The commission shall develop a process for designating areas unsuitable for surface coal mining. The process shall include:

(1) reviewing surface coal mining land;

(2) developing a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions about surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, before the commission makes a designation or redesignation under Section 134.020.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.017. PETITION FOR DESIGNATION. (a) An affected person is entitled:

(1) before an application is filed under Section 134.052, to petition the commission to designate an area unsuitable for surface coal mining operations; or

(2) to petition the commission to terminate a designation.

(b) The petition shall contain:

(1) allegations of facts; and

(2) supporting evidence that would tend to establish the allegations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.018. HEARING ON DESIGNATION. (a) Not later than 10 months after the date the commission receives the petition, the commission shall hold a public hearing under Chapter 2001, Government Code, in the locality of the affected area.

(b) After a person has filed a petition under Section 134.017 and before the hearing required by Subsection (a), any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(c) A hearing is not required if all petitioners stipulate agreement before the requested hearing and withdraw their requests.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.019. COMMISSION STATEMENT. Before designating a land area unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of the designation on the environment, the economy, and the supply of coal.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.020. DESIGNATION OF AREA AS UNSUITABLE FOR SURFACE COAL MINING. (a) On petition under Section 134.017, the commission shall designate an area unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.

(b) On petition under Section 134.017, the commission may designate a surface area unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(3) affect renewable resource lands, including aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, in which the operations could substantially endanger life and property.

(c) Sections 134.016 through 134.019 and this section do not apply to land:

(1) for which substantial legal and financial commitments in a surface coal mining operation or proposed operation were in existence before January 4, 1977;

(2) on which surface coal mining operations were being conducted on August 3, 1977; or

(3) on which surface coal mining operations are being conducted under a permit issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.021. INTEGRATION WITH LAND USE PLANNING AND REGULATION PROCESSES. Determinations of the unsuitability of land for surface coal mining under Sections 134.016 through 134.020 shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.022. PROHIBITION ON SURFACE COAL MINING IN CERTAIN AREAS. (a) Surface coal mining operations may not be permitted:

(1) that will adversely affect a publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or historic site;

(2) within 100 feet of the outside right-of-way line of a public road, except:

(A) where a mine access road or haulage road joins the

right-of-way line; or

(B) as provided by Subsection (b);

(3) within 300 feet of an occupied dwelling, unless the owner of the dwelling waives the prohibition;

(4) within 300 feet of a public, school, church, community, or institutional building;

(5) within 300 feet of a public park; or

(6) within 100 feet of a cemetery.

(b) The commission may permit a public road to be relocated or the area affected by surface coal mining operations to lie within 100 feet of the outside right-of-way line of the public road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) This section is subject to rights existing on August 3, 1977, and does not affect surface coal mining operations that existed on August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(e), eff. Sept. 1, 1997.

Sec. 134.023. COOPERATIVE AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may enter into cooperative agreements with the federal government under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.024. EXPERIMENTAL PRACTICES. (a) The commission, with approval by the secretary of agriculture, may authorize experimental departures, in individual cases, from the environmental protection performance standards of this chapter to:

(1) encourage advances in mining and reclamation practices; and

(2) allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities.

(b) The commission may authorize departures if:

(1) the experimental practices are potentially at least as

environmentally protective, during and after mining operations, as those required by this chapter;

(2) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(3) the experimental practices do not reduce the protection afforded public health and safety below that provided by adopted standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.025. CERTIFICATION OF BLASTERS. The commission shall adopt rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.026. MONITORING, REPORTING, AND INSPECTIONS. (a) The commission shall:

(1) require monitoring and reporting;

(2) inspect surface coal mining and reclamation operations;

(3) require the maintenance of signs and markers; and

(4) take other actions necessary to:

(A) administer, enforce, or evaluate the administration of this chapter; or

(B) meet the state program requirements of the federal Act.

(b) For purposes of this section, the commission or its authorized representative:

(1) without advance notice and on presentation of appropriate credentials, has the right to enter:

(A) a surface coal mining and reclamation operation; or

(B) premises on which records required to be maintained are located; and

(2) at reasonable times and without delay, may have access to and copy records required under this chapter or rules adopted under this chapter or inspect any monitoring equipment or method of operation required under this chapter or rules adopted under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.027. MONITORING OF OPERATIONS THAT AFFECT AQUIFERS. For surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the mining site, the commission shall specify:

(1) monitoring sites to record:

(A) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence;

(B) the level and amount and to take samples of groundwater and aquifers potentially affected by the mining and directly below the lowermost, deepest coal seam to be mined; and

(C) precipitation; and

(2) records of well logs and borehole data to be maintained.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.028. INSPECTION PROCEDURE. Inspections by the commission shall:

(1) occur irregularly, averaging not fewer than one partial inspection each month and one complete inspection each calendar quarter for the surface coal mining and reclamation operation covered by each permit;

(2) occur without prior notice to the permit holder or the permit holder's agents or employees except for necessary on-site meetings with the permit holder; and

(3) include filing inspection reports adequate to enforce the requirements of, and to carry out, this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.029. PROCEDURE ON DETECTION OF VIOLATION. On detection of a violation of this chapter, an inspector, in writing, shall:

(1) promptly inform the operator; and

(2) report the violation to the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.030. RULES REGARDING MONITORING, REPORTING, AND INSPECTIONS. The commission shall adopt rules for:

(1) informing an operator of a violation detected by an inspector; and

(2) making public all inspection and monitoring reports and other records and reports required to be kept under this chapter and rules adopted under this chapter and not confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.031. CONFIDENTIALITY. (a) Information pertaining to coal seams, test borings, core samplings, or soil samples required by Section 134.052 shall be made available to an affected person. However, information that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or chemical content that is potentially toxic in the environment, is confidential and is not a public record.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission.

(c) Information submitted to the commission under Section 134.041 concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission. However, information required by another section that must, by the terms of the other section, be on public file or available to an affected person and information about the chemical and physical properties of the coal that relate to mineral or elemental contents that are potentially toxic in the environment is not confidential.

(d) Information submitted to the commission under Section 134.014 as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area is not available for public examination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.032. DETERMINATION REGARDING PRIME FARMLAND. The commission may determine that land is not prime farmland because of its soil type or slope.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER C. PLANS

Sec. 134.041. RECLAMATION PLAN. A reclamation plan submitted as part of a permit application shall include, in sufficient detail to demonstrate that reclamation required by this chapter can be accomplished, a statement that:

(1) identifies land subject to the surface coal mining operation over the estimated life of the operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) describes the condition of the land to be covered by the permit before any mining, including:

(A) the uses existing at the time of the application and, if the land has a history of mining, the uses that preceded any mining;

(B) the capability of the land before any mining to support a variety of uses, considering soil and foundation characteristics, topography, vegetative cover, and, if applicable, a soil survey prepared under Section 134.052(a)(16);

(C) the productivity of the land before mining, including appropriate classification as prime farmland; and

(D) if the land is classified as prime farmland, the average yield of food, fiber, forage, or wood products obtained from the land under high levels of management;

(3) describes the proposed use of the land after reclamation,including:

(A) a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses; and

(B) the comments of state and local governments or agencies of state or local government that must approve or authorize the proposed use of the land after reclamation;

(4) describes in detail how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) specifies the engineering techniques proposed to be used in mining and reclamation and describes the major equipment;

(6) includes a plan for the control of surface water drainage and water accumulation;

(7) includes, if appropriate, a plan for backfilling, soil stabilization and compacting, grading, and appropriate revegetation;

(8) includes a plan for soil reconstruction, replacement, and stabilization under the performance standards in Section 134.092(a)(7) for land identified as prime farmland under Section 134.052(a)(16);

(9) estimates the cost for each acre of the reclamation, including a statement as to how the permit holder plans to comply with each requirement in Sections 134.091 through 134.109;

(10) describes the consideration given to maximizing the use and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized;

(11) provides an estimated timetable for accomplishing each

major step in the reclamation plan;

(12) describes the consideration given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(13) identifies the steps to be taken to comply with applicable air and water quality laws, rules, and regulations and any applicable health and safety standards;

(14) describes the consideration given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;

(15) contains the results of test borings the applicant has made at the permit area or other equivalent information in a form satisfactory to the commission, including:

(A) the location of subsurface water; and

(B) an analysis of the chemical properties of the coal and overburden that can be expected to adversely affect the environment;

(16) identifies:

(A) any land contiguous to the area to be covered by the permit, or any interest or option on an interest in the contiguous land, held by the applicant; and

(B) any pending bid by the applicant on an interest in the contiguous land; and

(17) describes in detail the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to surface-water systems and groundwater systems, both on and off the mine site; and

(C) the quantity of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process, or to provide alternative sources of water where the protection of quantity cannot be assured.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.042. BLASTING PLAN. An applicant for a surface coal mining and reclamation permit shall submit to the commission as part of its application a blasting plan that outlines the procedures and standards by which the operator will comply with Section 134.092(a)(15).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER D. SURFACE COAL MINING PERMITS

Sec. 134.051. PERMIT REQUIRED FOR OPERATION. A person may not conduct a surface coal mining operation in this state without first obtaining a permit for that operation from the commission under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.052. CONTENTS OF PERMIT APPLICATION. (a) A permit application must be submitted in a manner satisfactory to the commission and must contain:

(1) the name and address of:

(A) the applicant;

(B) each owner of record of the property to be mined;

(C) each holder of record of any leasehold interest in the property;

(D) the purchaser of record of the property under a real estate contract;

(E) the operator if the operator is not the applicant;

(F) the principals, officers, and resident agent of a person described by Paragraph (A), (B), (C), (D), or (E) if the person is a business entity other than a sole proprietor; and

(G) the owners of record of the property adjoining the permit area;

(2) a description of any:

(A) current or previous surface coal mining permits held by the applicant; or

(B) other pending application by the applicant;

(3) information about ownership and management of the

applicant or operator required by commission rule;

(4) a statement of whether the applicant or a subsidiary, affiliate, or other person controlled by or under common control with the applicant:

(A) has held a federal or state mining permit that has been suspended or revoked in the five years preceding the date the application is submitted and, if so, a brief explanation of the facts involved; or

(B) has forfeited a mining bond or similar security deposited in lieu of bond and, if so, a brief explanation of the facts involved;

(5) a copy of the notice required by Section 134.058;

(6) a description of:

(A) the type and method of the existing or proposed coal mining operation;

(B) the engineering techniques proposed or in use; and

(C) the equipment in use or proposed to be used;

(7) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(8) an accurate map or plan, to an appropriate scale, clearly showing:

(A) the land to be affected as of the date of the application; and

(B) the area of land in the permit area on which the applicant has the right to enter and begin surface mining operations;

(9) the documents on which the applicant bases the applicant's right to enter and begin surface mining operations on the affected area;

(10) a statement of whether the applicant's right to enter and begin surface mining operations on the affected area is the subject of pending court litigation;

(11) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(12) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface-water systems and groundwater systems, including the dissolved and suspended solids

under seasonal flow conditions;

(13) sufficient data on the mine site and surrounding areas for the commission to assess the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area, particularly on water availability;

(14) when requested by the commission, the published climatological factors peculiar to the locality of the land to be affected, including:

(A) the average seasonal precipitation;

(B) the average direction and velocity of prevailing winds; and

(C) the seasonal temperature ranges;

(15) a statement of the result of test borings or core samplings from the permit area, including:

(A) logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) a chemical analysis of any potentially acid- or toxic-forming sections of the overburden; and

(F) a chemical analysis of the stratum lying immediately underneath the coal to be mined;

(16) for land in the permit application that a reconnaissance inspection suggests may be prime farmland, a soil survey made or obtained according to standards established by the secretary of agriculture to confirm the exact location of the land;

(17) a reclamation plan that complies with this chapter;

(18) if applicable, a schedule listing any notices of violations as provided by Section 134.068;

(19) a certificate satisfactory to the commission that the applicant has a public liability insurance policy as described by Section 134.053 in effect for the surface coal mining and reclamation operation for which the permit is sought, or evidence satisfactory to the commission that the applicant should be allowed to be self-insured; and

(20) other data and maps the commission requires by rule.

(b) A determination under Subsection (a)(12) may not be required until the time that hydrologic information on the general area before mining is made available from an appropriate state agency, but the permit may not be approved until the information is

available and has been incorporated into the application.

(c) The commission may waive Subsection (a)(15) for a particular application if the commission determines in writing that the information is unnecessary.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.053. LIABILITY INSURANCE POLICY. (a) The public liability insurance policy required by Section 134.052(a)(19) shall provide for personal injury and property damage protection in an amount adequate to compensate a person who is:

(1) damaged as a result of the surface coal mining and reclamation operations, including the use of explosives; and

(2) entitled to compensation under state law.

(b) The policy shall be maintained in effect during the term of the permit and any renewal for the entire period in which reclamation operations are conducted.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.054. APPLICATION FEES. (a) An application for a surface mining permit or for renewal or revision of a surface mining permit must be accompanied by an application fee determined by the commission in accordance with a published fee schedule. The commission shall base the application fee as nearly as possible on the actual or anticipated cost of reviewing the application.

(b) The application fee may not be less than:

(1) $5,000 for an initial surface mining permit;

(2) $3,000 for renewal of a surface mining permit; or

(3) $500 for revision of a surface mining permit.

(c) The initial application fee and the application fee for renewal of a surface mining permit may be paid in equal annual installments during the term of the permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.055. ANNUAL FEES. (a) In addition to the application fees required by Section 134.054, each permit holder shall pay to the commission the following annual fees:

(1) a fee for each acre of land in the permit area on which the permit holder actually conducted operations for removing coal during the year;

(2) a fee for each acre of land in the bonded permit area on December 31 of the year; and

(3) a fee for the permit if the permit was in effect on December 31 of the year.

(b) A fee under Subsection (a) is due not later than March 15 of the year following the year for which the fee was imposed.

(c) The commission shall determine the amount of each fee under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2005, 79th Leg., Ch. 179 (H.B. 472), Sec. 1, eff. September 1, 2005.

Sec. 134.056. SMALL MINE EXEMPTION. The commission shall designate a qualified public or private laboratory to prepare the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by Section 134.052 and shall pay the costs of preparing the determination and statement if:

(1) a surface coal mining operator makes a request in writing; and

(2) the commission finds that the probable total annual production at all locations of the surface coal mining operator will not exceed 300,000 tons.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.057. PUBLIC INSPECTION OF APPLICATION. (a) An applicant for a surface coal mining and reclamation permit shall file

a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur. This subsection does not apply to information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this chapter by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining. This subsection does not apply to records, reports, inspection materials, or information that is confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.058. NOTICE BY APPLICANT. At the time the applicant submits an application for a surface coal mining and reclamation permit or renewal of an existing permit, the applicant shall publish an advertisement in a newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks that:

(1) shows the ownership and describes the location and boundaries of the proposed site sufficiently so that the proposed operation can be readily located; and

(2) states that the application is available for public inspection at the county courthouse of the county in which the property lies.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.059. NOTIFICATION BY COMMISSION. (a) The commission shall notify local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality of a proposed surface coal mining operation that the operator intends to conduct a surface mining operation.

(b) The notice shall indicate the application number and the county courthouse in which a copy of the proposed surface coal mining

and reclamation plan can be inspected.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.060. COMMENTS. (a) During a period established by the commission, a local body, agency, authority, or company described by Section 134.059 may submit written comments on the effect of the proposed operation on the environment in the entity's area of responsibility.

(b) The commission shall immediately send the comments to the applicant.

(c) The comments shall be made available to the public at the same location as the mining application.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.061. WRITTEN OBJECTIONS. (a) Not later than the 30th day after the date of the last publication of notice under Section 134.058, an affected person or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to a proposed initial or revised application for a surface coal mining and reclamation operation permit.

(b) The commission shall immediately send the objections to the applicant.

(c) The objections shall be made available to the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.062. REQUEST FOR PUBLIC HEARING; NOTICE. (a) Not later than the 45th day after the date of the last publication of notice under Section 134.058, the applicant or an affected person may request a hearing on the application. The hearing shall be held not later than the 30th day after the date the commission receives the request.

(b) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.063. NOTICE OF APPROVAL OR DENIAL. The commission shall notify the applicant and any objector that the permit application has been approved or denied:

(1) within the time provided by Chapter 2001, Government Code, if a public hearing is held under Section 134.062; or

(2) not later than the 45th day after the date of the last publication of notice of application if a public hearing is not held.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.064. PROCEDURE. Chapter 2001, Government Code, applies to a permit application under this chapter. Notice of hearing and appeal is governed by that chapter, except as provided by Section 134.062.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.065. PERMIT APPROVAL OR DENIAL. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this chapter, the commission shall grant, require modification of, or deny a permit application.

(b) The commission shall notify the applicant of its decision in writing within a reasonable time as set by the commission.

(c) An applicant for a permit or a permit revision has the burden of establishing that the application complies with this chapter.

(d) Not later than the 10th day after the date the commission grants a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.066. WRITTEN FINDINGS REQUIRED. (a) The commission may not approve an application for a permit or a permit revision unless it finds, in writing, using the information in the application or information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and complies with this chapter;

(2) the applicant has demonstrated that the reclamation required by this chapter can be accomplished under the reclamation plan contained in the application;

(3) the commission has assessed the probable cumulative impact that all anticipated surface coal mining in the area will have on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included in an area:

(A) designated unsuitable for surface coal mining under this chapter; or

(B) under study for this designation in an administrative proceeding begun under this chapter;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, will not:

(A) interrupt, discontinue, or preclude farming on alluvial valley floors that are irrigated or naturally subirrigated, excluding:

(i) undeveloped rangeland that is not significant to farming on the alluvial valley floors; and

(ii) land on which the commission finds that the farming to be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural

production; or

(B) materially damage the quantity or quality of water in surface or underground water systems that supply those valley floors; and

(6) the applicant has submitted to the commission, if the ownership of the coal has been severed from the private surface estate:

(A) the surface owner's written consent to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(b) Subsection (a)(4)(B) does not apply to an area as to which an administrative proceeding has begun if the applicant demonstrates that, before January 1, 1977, the applicant made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(c) Subsection (a)(5) does not apply to a surface coal mining operation that in the year preceding May 9, 1979:

(1) produced coal in commercial quantities and was located in or adjacent to alluvial valley floors; or

(2) had obtained specific permit approval by the commission to conduct surface coal mining operations in the alluvial valley floors.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.067. DETERMINATION OF OWNERSHIP. If the ownership of the coal has been severed from the private surface estate by a conveyance that does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.068. SCHEDULE OF NOTICES OF VIOLATIONS. (a) The applicant shall file with the application a schedule listing any notices of violations of this chapter, the federal Act, a federal

regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the three years before the application date.

(b) The schedule must indicate the final resolution of any notice of violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Sec. 134.069. EFFECT OF PAST OR PRESENT VIOLATION. (a) If the schedule under Section 134.068 or other information available to the commission indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or another law referred to in Section 134.068, the commission may not issue a permit until the applicant submits proof that the violation has been corrected or is being corrected to the satisfaction of the commission, department, or agency with jurisdiction over the violation.

(b) The commission may not issue a permit to an applicant if it finds, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of wilful violations of this chapter or another law referred to in Section 134.068 that, by their nature and duration and the resulting irreparable damage to the environment, indicate an intent not to comply with this chapter or another law referred to in that section.

(c) Notwithstanding Subsections (a) and (b), the commission may not deny an applicant's permit application based on a previous violation by the applicant that occurred in connection with a surface coal mining operation conducted on previously mined land if the violation resulted from an event or condition that was not contemplated in the permit for the surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 2, eff. June 17, 2011.

Sec. 134.070. PERMIT FOR MINING ON PRIME FARMLAND. (a) After consulting with the secretary of agriculture and under regulations issued under the federal Act by the secretary of the interior with the concurrence of the secretary of agriculture, the commission shall grant a permit to mine on prime farmland if:

(1) the area proposed to be mined contains prime farmland;

(2) the commission makes the findings required by Section 134.066 for the application under consideration; and

(3) the commission in addition finds in writing that:

(A) the operator has the technological capability to restore the mined area within a reasonable time to a level of yield equal to or higher than that of nonmined prime farmland in the surrounding area under equivalent levels of management; and

(B) the applicant can meet the soil reconstruction standards of the federal Act.

(b) This section does not apply to:

(1) a permit issued before August 3, 1977;

(2) a revision or renewal of a permit issued before August 3, 1977; or

(3) an existing surface mining operation for which a permit was issued before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.071. TERM. (a) A permit is issued for a term not to exceed five years.

(b) The commission may grant a permit for a specified longer term if:

(1) an applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment or the opening of the operation; and

(2) the application for the specified longer term is complete.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.072. TERMINATION ON FAILURE TO BEGIN OPERATIONS. (a) A permit terminates if the permit holder has not begun the surface coal mining operation covered by the permit on or before the third anniversary of the date on which the period for which the permit is issued begins.

(b) The commission may grant reasonable extensions of time on a showing that the extensions are necessary because of:

(1) litigation that precludes the beginning of operations or threatens substantial economic loss to the permit holder; or

(2) conditions beyond the control and without the fault or negligence of the permit holder.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, a permit holder is considered to have begun surface mining operations at the time the construction of the facility is initiated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.073. SUCCESSOR IN INTEREST. A successor in interest to a permit holder may continue the surface coal mining and reclamation plan of the original permit holder until the successor's application is granted or denied if the successor:

(1) applies for a new permit not later than the 30th day after the date the person succeeds to the interest; and

(2) is able to obtain the same bond coverage as the original permit holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.074. RIGHT TO RENEWAL. A permit issued under this chapter carries with it the right of successive renewal on expiration for areas within the boundaries of the existing permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.075. APPLICATION FOR AND ISSUANCE OF RENEWAL. (a) A permit holder may apply for renewal.

(b) After the public notice requirements of Sections 134.058 through 134.062 have been met, the commission shall renew the permit unless the opponents of renewal establish and the commission makes written findings that:

(1) the terms of the existing permit are not being satisfactorily met;

(2) the present surface coal mining and reclamation operation does not comply with the environmental protection standards of this chapter;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility for existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation and any additional bond the commission may require under Section 134.121 will continue in effect for the renewal requested in the application; or

(5) additional revised or updated information required by the commission has not been provided.

(c) Before renewing a permit, the commission shall notify the appropriate public authorities.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.076. EXTENSION OF PERMIT AREA. (a) Except for incidental boundary revisions, an extension of the permit area must be made by application for another permit.

(b) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the part of the application that addresses new land areas must meet all standards applicable to a new application under this chapter.

(c) Notwithstanding Subsection (b), if the surface coal mining operations authorized by the existing permit are not subject to the

standards contained in Section 134.066(a)(5), the part of the application for renewal that addresses new land areas previously identified in the reclamation plan submitted under Section 134.041 is not subject to those standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.077. TERM OF RENEWAL PERMIT. A permit renewal is for a term not to exceed the term of the original permit established by this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.078. TIME LIMIT FOR RENEWAL APPLICATION. Application for permit renewal must be made not later than the 120th day before the date the existing permit expires.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.079. APPLICATION FOR PERMIT REVISION. During the term of a permit, the permit holder may submit to the commission an application for a permit revision, together with a revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.080. APPROVAL OF PERMIT REVISION. The commission may not approve an application for a permit revision unless the commission finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 2, eff. May 27, 2011.

Sec. 134.081. GUIDELINES FOR REVISION. (a) The commission shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply.

(b) A revision that proposes significant alterations in the reclamation plan is subject at a minimum to notice and hearing requirements.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.082. COMMISSION REQUIREMENT OF PERMIT REVISION OR MODIFICATION. (a) The commission, within a time prescribed by rule, shall review outstanding permits and may require reasonable revision or modification of a permit during the term of the permit.

(b) A revision or modification must be supported by a written finding and is subject to the notice and hearing requirements of Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.083. TRANSFER OF PERMIT. A person may not transfer, assign, or sell the rights granted under a permit issued under this chapter without the written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.084. SUSPENSION OR RESCISSION OF IMPROVIDENTLY ISSUED PERMIT. (a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.

(b) A rule adopted by the commission under this section must be

consistent with and not less effective than a regulation adopted under the federal Act.

(c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.

(d) A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(g), eff. Sept. 1, 1997.

Sec. 134.085. REVIEW PERIODS FOR NEW PERMITS, RENEWALS, AND REVISIONS. (a) Not later than the seventh day after the date the commission receives an application for a new permit or for renewal or a significant revision of a permit, the director shall complete a review of the application to determine whether the application is complete.

(b) If the director determines that the application is complete, the director shall file the application with the commission's office of general counsel for processing under commission rules and Chapter 2001, Government Code.

(c) If the director determines that the application is not complete, the director shall send a written notice to the applicant that identifies the specific information that the applicant must provide to the commission. Not later than the seventh day after the date the commission receives the requested information, the director shall complete another review of the application to assess the completeness of the application.

(d) Not later than the 120th day after the date the commission receives an application described by Subsection (a) that the director determines is complete, the director shall complete the technical review of the application and make a recommendation to approve or deny the application to the commission's office of general counsel.

(e) If the director determines that the application is deficient under Subsection (d):

(1) the period required by Subsection (d) for completing

the review of the application is tolled until the date the commission receives the requested information from the applicant; and

(2) the director shall send a written notice to the applicant that notifies the applicant:

(A) that the review period required by Subsection (d) is being tolled;

(B) of the reason the review period is being tolled;

(C) of the information the applicant must submit to the commission before the commission will resume the review of the application; and

(D) of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

(f) If the applicant submits supplemental information to the commission that is not in response to a request for information under Subsection (e), the director may extend the review period required by Subsection (d) for an additional period of not more than 60 days. The director shall provide written notice to the applicant that includes the director's decision regarding whether to extend the review period, the reason for the decision, and the number of days remaining in the review period.

(g) This subsection and Subsection (h) apply only to an application for a permit revision that the director determines is not a significant departure from the approved method or conduct of mining and reclamation operations. Not later than the 90th day after the date the commission receives a complete application, the director shall provide written notice to the applicant that the permit revision request has been approved or denied.

(h) If the director determines that the application is deficient:

(1) the review period required by Subsection (g) to approve or deny the application under this section is tolled until the date the commission receives the requested information from the applicant; and

(2) the director shall send a written notice to the applicant that notifies the applicant:

(A) that the review period required by Subsection (g) is being tolled;

(B) of the reason the review period is being tolled;

(C) of the information that the applicant must submit

to the commission before the commission will resume the review of the revision application; and

(D) of the number of days remaining that the commission has to review the application after the commission receives the requested information from the applicant.

Added by Acts 2011, 82nd Leg., R.S., Ch. 143 (S.B. 1478), Sec. 3, eff. May 27, 2011.

SUBCHAPTER E. PERFORMANCE STANDARDS

Sec. 134.091. OPERATIONS REQUIRED TO MEET PERFORMANCE STANDARDS. A permit issued under this chapter to conduct surface coal mining operations shall require that the operations meet the applicable performance standards of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.092. PERFORMANCE STANDARDS. (a) Performance standards for surface coal mining and reclamation operations shall require an operator:

(1) to conduct surface coal mining operations to maximize the use and conservation of the solid fuel resource being recovered so that reaffecting the land in the future through surface coal mining can be minimized;

(2) to restore the land affected to a condition capable of supporting the uses that it could support before mining or reasonably likely higher or better uses if:

(A) the uses do not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution; and

(B) the permit applicant's declared proposed land use following reclamation:

(i) is not considered impractical or unreasonable;

(ii) is not inconsistent with applicable land use policies and plans;

(iii) does not involve unreasonable delay in implementation; and

(iv) does not violate federal, state, or local law;

(3) except as provided by Sections 134.093(b), 134.094(b), and 134.107, to backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed to retain moisture to assist revegetation or as otherwise authorized under this chapter;

(4) to stabilize and protect the surface areas, including spoil piles affected by the surface coal mining and reclamation operation, for effective control of erosion and attendant air and water pollution;

(5) to remove the topsoil from the land in a separate layer and replace it on the backfill area or, if the topsoil is not used immediately, to segregate it in a separate pile from other spoil;

(6) to restore the topsoil or the best available subsoil that is best able to support vegetation;

(7) for prime farmland to be mined and reclaimed, at a minimum:

(A) to segregate the A horizon of the natural soil, unless it can be shown that other available soil materials will create a final soil having a greater productive capacity, and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) to segregate the B horizon of the natural soil, underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of a depth and quality comparable to that which existed in the natural soil and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) to replace and regrade the root zone material described by Subdivision (7)(B) with proper compaction and uniform depth over the regraded spoil material; and

(D) to redistribute and grade uniformly the surface soil horizon described by Subdivision (7)(A);

(8) to create a permanent impoundment of water on a mining site as part of a reclamation activity if:

(A) the approved mining and reclamation plan and permit authorize impoundment; and

(B) it is adequately demonstrated that:

(i) the size of the impoundment is adequate for its intended purposes;

(ii) the impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.);

(iii) the quality of impounded water will be permanently suitable for its intended use;

(iv) discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established under applicable federal and state law;

(v) the water level will be reasonably stable;

(vi) final grading will provide adequate safety and access for proposed water users; and

(vii) the impoundment will not reduce the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) to conduct any augering operation associated with surface mining so as to maximize recoverability of coal reserves remaining after the operation and reclamation are complete and to seal the auger holes with an impervious and noncombustible material to prevent drainage unless the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety;

(10) to minimize disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface-water systems and groundwater systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by measures including:

(i) preventing water from contacting or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that

adversely affects downstream water when the drainage is released to a watercourse; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater;

(B) conducting surface coal mining operations to:

(i) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area; and

(ii) prevent those contributions from exceeding requirements set by applicable state or federal law;

(C) constructing any siltation structures under Paragraph (B) before beginning surface coal mining operations;

(D) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the commission;

(E) restoring the recharge capacity of the mined area to approximate premining conditions;

(F) avoiding channel deepening or enlargement in operations requiring the discharge of water from a mine;

(G) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(H) performing other actions the commission prescribes;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations:

(A) to stabilize the waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary; and

(B) to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this chapter;

(12) to refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent a breakthrough and to protect the health or safety of miners;

(13) to design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards developed under commission rule, existing and new coal mine

waste piles used temporarily or permanently as dams or embankments;

(14) to ensure that debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion;

(15) to ensure that explosives are used in accordance with state and federal law, including commission rules;

(16) to ensure that reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations;

(17) to ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent:

(A) erosion and siltation;

(B) water pollution; and

(C) damage to:

(i) fish or wildlife or their habitat; or

(ii) public or private property;

(18) to refrain from constructing roads or other access ways up a stream bed or drainage channel or so near the channel as to seriously alter the normal flow of water;

(19) to establish on regraded areas and other affected land a diverse, effective, and permanent vegetative cover:

(A) of the seasonal variety native to the area of land to be affected;

(B) capable of self-regeneration and plant succession; and

(C) at least equal in extent of cover to the natural vegetation of the area;

(20) to assume responsibility for successful revegetation as required by Subdivision (19) for:

(A) five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subdivision, if the land is not previously mined land; or

(B) two years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subdivision, if the land is previously mined land;

(21) to protect off-site areas from slides or damage

occurring during the surface coal mining and reclamation operations and to refrain from depositing spoil material or locating any part of the operations or waste accumulations outside the permit area;

(22) to place the excess spoil material resulting from surface coal mining and reclamation activities in accordance with Section 134.106;

(23) to meet other standards necessary to achieve reclamation in accordance with the purposes of this chapter, considering the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, to minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and to enhance those resources where practicable; and

(25) to provide an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(b) In Subsection (a)(13), "coal mine waste piles" means piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(h), eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 3, eff. June 17, 2011.

Sec. 134.093. BACKFILLING, GRADING, AND COMPACTING: INSUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) that is carried out at the same location over a substantial period;

(2) that transects the coal deposit;

(3) in which the thickness of the coal deposit relative to the volume of the overburden is large; and

(4) for which the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the

permit area or otherwise available from the entire permit area are insufficient, considering volumetric expansion, to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator, at a minimum, shall backfill, grade, and compact, where advisable, using the available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.094. BACKFILLING, GRADING, AND COMPACTING: SUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) in which the volume of overburden is large relative to the thickness of the coal deposit; and

(2) for which the operator demonstrates that because of volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region. The overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.095. MAINTENANCE OF TOPSOIL OR OTHER STRATA. (a) The performance standards shall require that, if the topsoil is not replaced on a backfill area within a time short enough to avoid

deterioration of the topsoil, the operator shall maintain a successful cover by quick-growing plant or other means so that the topsoil:

(1) is preserved from wind and water erosion;

(2) remains free of contamination by other acid or toxic material; and

(3) is in a usable condition for sustaining vegetation when restored during reclamation.

(b) The performance standards shall require that, if topsoil is of insufficient quantity or of poor quality for sustaining vegetation requirements or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in the manner provided by Section 134.092(a)(5) and Subsection (a) the other strata that are best able to support vegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.096. SPECIFICATIONS FOR SOIL REMOVAL, STORAGE, REPLACEMENT, AND RECONSTRUCTION. For prime farmland to be mined and reclaimed, the applicable specifications for soil removal, storage, replacement, and reconstruction are those established by the secretary of agriculture.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.097. REMOVAL, STORAGE, AND REPLACEMENT OF SOIL AND OVERBURDEN WITHOUT REGARD TO SOIL HORIZONS. (a) This section applies only to prime farmland to be mined and reclaimed.

(b) On proper documentation supporting the use of the mining technique to obtain crop yields equivalent to or higher than yields on surrounding nonmined soil of the same type, the commission may authorize the permit holder, without regard to soil horizons, to:

(1) remove the soil and overburden in one step;

(2) store the soil and overburden in one stockpile; and

(3) begin reclamation by replacing and grading the stockpile material.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.098. PROHIBITION ON AUGERING. The commission may prohibit augering if necessary to:

(1) maximize the use, recoverability, or conservation of the solid fuel resources; or

(2) protect against adverse water quality impacts.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.099. CERTIFICATION OF SILTATION STRUCTURE. The performance standards shall require that a siltation structure constructed under Section 134.092(a)(10)(B) be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.100. PROXIMITY OF MINE TO UNDERGROUND MINES: EXCEPTION. Notwithstanding Section 134.092(a)(12), the commission shall permit an operator to mine near or through an abandoned underground mine or closer to an active underground mine than allowed by that section if:

(1) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners; and

(2) the operations will result in:

(A) improved resource recovery;

(B) abatement of water pollution; or

(C) elimination of hazards to the health and safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.101. RULES REGARDING USE OF EXPLOSIVES. The commission rules described by Section 134.092(a)(15) shall require that:

(1) adequate advance written notice be given to local governments and residents who might be affected by the use of the explosives, by:

(A) publishing the planned blasting schedule in a newspaper of general circulation in the locality;

(B) mailing a copy of the proposed blasting schedule to each resident living within one-half mile of the proposed blasting site; and

(C) providing daily notice to residents in the area before blasting;

(2) a log be maintained for at least three years and made available for public inspection on request, detailing:

(A) the location of the blasts;

(B) the pattern and depth of the drill holes;

(C) the amount of explosives used for each hole; and

(D) the order and length of delay in the blasts;

(3) the type of explosives and detonating equipment and the size, timing, and frequency of blasts be limited according to the physical conditions of the site to prevent:

(A) injury to persons;

(B) damage to public and private property outside the permit area;

(C) adverse impacts on an underground mine; and

(D) change in the course, channel, or availability of groundwater or surface water outside the permit area;

(4) blasting operations be conducted by trained and competent persons certified by the commission; and

(5) on the request of a resident or owner of a man-made structure within one-half mile of the permit area, the applicant or permit holder:

(A) conduct a preblasting survey of the structures in an area to be decided by the commission; and

(B) submit the survey to the commission with a copy to the resident or owner making the request.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.102. VARIANCE TO PERMIT UNDERGROUND MINING OPERATIONS BEFORE RECLAMATION. (a) The commission may grant a variance from the contemporaneous reclamation requirement of Section 134.092(a)(16) for specific areas within the reclamation plan to permit underground mining operations before reclamation if:

(1) the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources; and

(2) the commission finds in writing that:

(A) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbances of the surface;

(C) the applicant has satisfactorily demonstrated that:

(i) the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction; and

(ii) permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) the applicant has shown that the areas proposed for the variance are necessary for implementing the proposed underground mining operations;

(E) substantial environmental damage, either on or off the site, will not result from the delay in completing reclamation as required by this chapter; and

(F) provisions for the off-site storage of spoil will comply with Section 134.106.

(b) Liability under the bond filed by the applicant with the commission under Section 134.121 must extend for the duration of the underground mining operations and until Sections 134.092 through 134.106 and Sections 134.128 through 134.134 have been complied with.

(c) The commission must adopt specific rules to govern the granting of a variance under this section and may impose additional requirements it considers necessary.

(d) The commission shall review a variance granted under this section not later than the third anniversary of the date the permit is issued.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.103. USE OF INTRODUCED SPECIES FOR REVEGETATION. Notwithstanding Section 134.092(a)(19), introduced species may be used in the revegetation process where necessary to achieve the approved postmining land use plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.104. RESPONSIBILITY FOR REVEGETATION: AREA OF LOW PRECIPITATION. Notwithstanding Section 134.092(a)(20), in areas or regions of the state where the annual average precipitation is 26 inches or less, an operator's assumption of responsibility and liability extends for:

(1) 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work, if the land is not previously mined land; or

(2) five years after the last year of augmented seeding, fertilizing, irrigation, or other work, if the land is previously mined land.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 4, eff. June 17, 2011.

Sec. 134.105. RESPONSIBILITY FOR REVEGETATION: LONG-TERM INTENSIVE AGRICULTURAL POSTMINING USE. (a) The applicable period of responsibility for revegetation begins on the date of initial planting for long-term intensive agricultural postmining land use if the commission approves a long-term intensive agricultural postmining

land use.

(b) The commission may grant an exception to Section 134.092(a)(19) if the commission issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 442 (S.B. 1295), Sec. 5, eff. June 17, 2011.

Sec. 134.106. SPOIL DISPOSAL. (a) The performance standards shall require an operator:

(1) to transport the excess spoil material resulting from surface coal mining and reclamation activities and place it in a controlled manner in position for concurrent compaction to assure mass stability and to prevent mass movement;

(2) to dispose of spoil only within the bonded permit areas;

(3) to remove the organic matter immediately before spoil placement;

(4) to use appropriate surface and internal drainage systems and diversion ditches to prevent spoil erosion and movement;

(5) to use a spoil disposal area that does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that prevents the water from filtering into the spoil pile;

(6) if the spoil is placed on a slope:

(A) to place the spoil on the most moderate slope among the slopes on which, in the judgment of the commission, the spoil could be placed in compliance with this chapter; and

(B) where possible, to place the spoil on or above a natural terrace, bench, or berm if that placement provides additional stability and prevents mass movement;

(7) to construct a rock toe buttress of sufficient size to prevent mass movement if the toe of the spoil rests on a downslope; and

(8) to place the spoil in compliance with other provisions

of this chapter.

(b) The final configuration of the spoil disposal area shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(c) The design of the spoil disposal area shall be certified by a qualified registered professional engineer in conformance with professional standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.107. PERMIT WITHOUT REGARD TO REQUIREMENT TO RESTORE TO APPROXIMATE ORIGINAL CONTOUR. (a) The commission may grant a permit, without regard to the requirement to restore to approximate original contour set forth in Section 134.092(a)(3) or 134.108(a)(2), for the surface mining of coal if:

(1) the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided by Subsection (b)(1), by removing the overburden and creating a level plateau or a gently rolling contour that has no highwalls remaining and that can support postmining uses in accord with this section;

(2) an industrial, commercial, agricultural, residential, or public facility use, including use as a recreational facility, is proposed for the postmining use of affected land;

(3) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is considered to constitute an economic or public use of the affected land equal to or better than premining use;

(4) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

(A) compatible with adjacent land uses;

(B) obtainable according to data regarding expected need and market;

(C) assured of investment in necessary public facilities;

(D) supported by commitments from public agencies, where appropriate;

(E) practicable with respect to private financial

capability for completion of the proposed use;

(F) planned under a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and

(G) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(5) the proposed use is consistent with adjacent land uses and existing state and local land use plans and programs;

(6) the commission provides the county in which the land is located and any state or federal agency that the commission, in its discretion, determines to have an interest in the proposed use an opportunity of not more than 60 days to review and comment on the proposed use; and

(7) the other requirements of this chapter are met.

(b) In granting a permit under this section, the commission shall require that:

(1) the toe of the lowest coal seam and the associated overburden are retained in place as a barrier to slides and erosion;

(2) the reclaimed area is stable;

(3) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(4) natural watercourses are not damaged;

(5) spoil is placed on the mountaintop bench as necessary to achieve the planned postmining land use and any excess spoil material not retained on the mountaintop is placed in accordance with Section 134.106;

(6) the stability of the spoil retained on the mountaintop is ensured; and

(7) the other requirements of this chapter are met.

(c) The commission shall adopt specific rules to govern the granting of permits under this section and may impose additional requirements it considers necessary.

(d) A permit granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the applicant demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.108. STEEP SLOPE SURFACE COAL MINING. (a) An operator of a steep slope surface coal mining operation, in addition to meeting the general performance standards of this subchapter:

(1) shall ensure that during surface coal mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter is not placed on the downslope below the bench or mining cut;

(2) shall backfill with spoil material to:

(A) return the site to the approximate original contour; and

(B) maintain the stability of the material after mining and reclamation; and

(3) may not disturb land above the top of the highwall.

(b) Notwithstanding Subsection (a)(1), the operator shall permanently store under Section 134.106 spoil material in excess of that required to reconstruct the approximate original contour under Section 134.092(a)(3) or Subsection (a)(2).

(c) Notwithstanding Subsection (a)(3), the operator may disturb land above the top of the highwall if the commission finds that the disturbance will facilitate compliance with the environmental protection standards of this subchapter. The amount of land disturbed above the highwall may not exceed the amount necessary to facilitate the compliance.

(d) This section does not apply to an operator who:

(1) is mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area; or

(2) meets the requirements of Section 134.107.

(e) In this section, "steep slope" means a slope:

(1) that exceeds 20 degrees; or

(2) less than or equal to 20 degrees determined by the commission to be a steep slope after considering soil, climate, or other characteristics of the region or the state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.109. VARIANCE FROM REQUIREMENT TO RESTORE CONTOUR. (a) The commission may grant a variance from the requirement in Section 134.108(a)(2) to restore to approximate original contour after steep slope surface coal mining if:

(1) the surface owner requests in writing, as part of the permit application, that the variance be granted to render the land suitable after reclamation for industrial, commercial, residential, or public use, including use as a recreational facility;

(2) the watershed control of the affected area is improved; and

(3) other requirements of this section are met.

(b) The watershed control of an affected area is considered to be improved for purposes of Subsection (a) if the potential use of the affected land is:

(1) considered by the commission, after consultation with the appropriate land use planning agencies, if any, to constitute an economic or public use equal to or better than the premining use;

(2) designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(3) approved by the appropriate state environmental agencies.

(c) In granting a variance under this section, the commission shall require the operator to:

(1) backfill with spoil material to cover the highwall completely and ensure that the material maintains stability after mining and reclamation;

(2) place off the mine bench only the amount of spoil necessary to achieve the planned postmining land use;

(3) comply with Section 134.106 in placing spoil off the mine bench;

(4) ensure stability of the spoil retained on the bench; and

(5) meet the other requirements of this chapter.

(d) The commission shall adopt specific rules to govern the granting of variances under this section and may impose additional

requirements it considers necessary.

(e) A variance granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the permit holder demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.110. WATER SUPPLY REPLACEMENT. The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source if the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER F. BONDS AND DEPOSITS

Sec. 134.121. PERFORMANCE BOND REQUIREMENT. (a) After a surface coal mining and reclamation permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a performance bond payable to this state and conditioned on the faithful performance of the requirements of this chapter and the permit.

(b) The bond shall cover the area of land in the permit area on which the applicant will begin and conduct surface coal mining and reclamation operations during the initial term of the permit.

(c) The permit holder shall provide an additional bond or bonds to cover a succeeding increment of surface coal mining and reclamation operations conducted in the permit area at the time the increment begins.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.122. AMOUNT OF BOND. (a) The commission shall determine the amount of the bond required for each bonded area.

(b) The amount of the bond shall:

(1) reflect the probable difficulty of the reclamation, considering factors including:

(A) topography;

(B) geology of the site;

(C) hydrology; and

(D) revegetation potential; and

(2) be sufficient to assure completion of the reclamation plan if the commission has to perform the work in the event of forfeiture.

(c) The bond for the entire area under one permit may not be less than $10,000.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.123. BOND WITHOUT SURETY. The commission may accept the bond of an applicant without separate surety if the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond the amount.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.124. ALTERNATIVE TO BONDING PROGRAM. Instead of establishing a bonding program under this subchapter, the commission may approve an alternative system that will achieve the purposes of the bonding program under this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.125. EXTENT OF LIABILITY UNDER BOND. Liability under

the bond shall be for the duration of the surface coal mining and reclamation operation and of the applicant's responsibility for revegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.126. SECURITY FOR BOND. (a) The applicant and a corporate surety licensed to do business in this state shall execute the bond unless the applicant elects to deposit security under Subsection (b).

(b) The applicant may elect to deposit as security for the performance of the applicant's obligations under the bond:

(1) cash;

(2) negotiable bonds of the United States government or the state; or

(3) negotiable certificates of deposit of a bank organized or transacting business in the United States.

(c) The cash deposit or market value of the securities deposited under Subsection (b) must equal or exceed the amount of the bond required for the bonded area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.127. ADJUSTMENT OF AMOUNT OF BOND OR DEPOSIT. The commission periodically shall adjust the amount of the bond or deposit required and the terms of each acceptance of the applicant's bond to reflect changes in:

(1) the acreage affected; or

(2) the cost of future reclamation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.128. APPLICATION FOR RELEASE OF BOND OR DEPOSIT. The permit holder may file a request with the commission for the release of all or part of a performance bond or deposit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.129. NOTICE. (a) Not later than the 30th day after the date the permit holder files with the commission an application for release of a bond or deposit, the permit holder shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement is part of a bond release application and shall:

(1) identify the precise location of the land affected;

(2) state the number of acres;

(3) identify the permit and the date the permit was approved;

(4) state the amount of the bond filed and the portion sought to be released;

(5) describe the type and give appropriate dates of reclamation work performed; and

(6) describe the results achieved as they relate to the permit holder's reclamation plan.

(b) As part of a bond release application, the applicant shall submit copies of letters the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as the commission directs, notifying them of the applicant's intention to seek release from the bond.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.130. INSPECTION AND EVALUATION. (a) Not later than the 30th day after the date the commission receives a request under Section 134.128 and a copy of an advertisement or letters under Section 134.129, the commission shall inspect and evaluate the reclamation work involved.

(b) The evaluation shall consider, among other things:

(1) the degree of difficulty in completing any remaining reclamation;

(2) whether pollution of surface and subsurface water is occurring;

(3) the probability that pollution will continue to occur in the future; and

(4) the estimated cost of abating the pollution.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.131. RELEASE OF BOND OR DEPOSIT. (a) The commission may release part or all of the bond or deposit if the commission is satisfied that the reclamation covered by the bond or deposit or part of the reclamation has been accomplished as required by this chapter according to the schedule provided by this section.

(b) The commission may release 60 percent of the bond or deposit for the applicable permit area if the permit holder completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan.

(c) The commission may release part of the bond after successful revegetation has been established on the regraded mined lands in accordance with the reclamation plan. In determining the amount of the bond to be released under this subsection, the commission shall retain, for the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105, a bond amount for the revegetated area that is sufficient for a third party to establish revegetation.

(d) The commission may not release any of the bond or deposit under Subsection (c) if:

(1) the land to which the release would apply is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of Section 134.092(a)(10); or

(2) soil productivity for prime farmland has not returned to levels of yield equivalent to those of nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey performed under Section 134.052(a)(16).

(e) If a silt dam will be retained as a permanent impoundment under Section 134.092(a)(8), the commission may release the part of

the bond authorized by Subsection (c) after provisions for sound future maintenance have been made with the commission.

(f) The commission may release the remaining part of the bond if:

(1) the permit holder has successfully completed all surface coal mining and reclamation activities;

(2) the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105 has expired; and

(3) all reclamation requirements of this chapter have been met.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.132. NOTICE TO PERMIT HOLDER OF DECISION TO APPROVE OR DISAPPROVE RELEASE. (a) The commission shall notify the permit holder in writing of its decision to release or not to release all or part of the bond or deposit:

(1) not later than the 60th day after the date the request is filed if a public hearing is not held; or

(2) not later than the 30th day after the date of the hearing if a public hearing is held.

(b) If the commission disapproves the application for release of all or part of the bond, it shall notify the permit holder, in writing:

(1) stating the reasons for disapproval;

(2) recommending corrective actions necessary to secure the release; and

(3) allowing opportunity for a public hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.133. NOTICE TO COUNTY JUDGE. Not later than the 31st day before the date of release of all or part of a bond, the commission, by certified mail, shall notify the county judge of any county in which the surface coal mining operation is located that an application for the release has been filed with the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.134. OBJECTIONS TO RELEASE. (a) A person is entitled to file a written objection to a proposed release of a bond if the person:

(1) has a legal interest that might be adversely affected by release of the bond; or

(2) is the responsible officer or head of a federal, state, or local governmental agency that:

(A) has jurisdiction by law or has special expertise with respect to an environmental, social, or economic impact involved in the mining operation; or

(B) is authorized to develop and enforce environmental standards with respect to the operation.

(b) Objections must be filed with the commission not later than the 30th day after the date of the last publication of the notice under Section 134.129.

(c) If a written objection is filed and a public hearing is requested, not later than the 30th day after the date the hearing is requested the commission shall:

(1) inform the interested parties of the time and place of the hearing; and

(2) hold the hearing in the locality of the surface coal mining operation or at the state capital, at the option of the person objecting to the proposed release.

(d) The commission shall advertise the date, time, and location of the hearing in a newspaper of general circulation in the locality of the surface coal mining operation for two consecutive weeks.

(e) The hearing and any appeal shall be conducted under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER G. ABANDONED MINE RECLAMATION

Sec. 134.141. FUND PARTICIPATION. (a) The commission may take any action necessary to:

(1) ensure this state's participation to the fullest extent practicable in the abandoned mine reclamation fund established by the federal Act; and

(2) act as this state's agency for that participation.

(b) Under the federal Act, the commission by rule shall:

(1) establish priorities that meet the terms of that Act for the expenditure of money in the fund;

(2) designate the land and water eligible for reclamation or abatement expenditures;

(3) submit reclamation plans, annual projects, and applications to the appropriate authorities under that Act; and

(4) administer money received for abandoned mine reclamation or related purposes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.142. ELIGIBILITY OF LAND AND WATER. Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.143. RIGHT OF ENTRY. The commission is entitled to enter any property to conduct studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.144. RECLAMATION BY COMMISSION. (a) The commission

is entitled to enter property adversely affected by past coal mining practices or other property necessary to have access to that property to do the things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the commission:

(1) makes a finding of fact that:

(A) land or water resources have been adversely affected by past coal mining practices;

(B) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

(i) are not known or readily available; or

(ii) will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

(2) gives notice by mail to the owners, if known, or, if not known, by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies.

(b) The money expended for the work and the benefits accruing to the premises entered are chargeable against the land and mitigate or offset a claim for, or an action brought by an owner of an interest in the premises for, damages from the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.145. ACQUISITION. This state may acquire by purchase, donation, or condemnation land that is adversely affected by past coal mining practices if:

(1) it is in the public interest; and

(2) the commission determines that:

(A) acquiring the land is necessary for successful

reclamation;

(B) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(i) serve recreational and historical purposes;

(ii) serve conservation and reclamation purposes; or

(iii) provide open space benefits; and

(C) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, acquisition of coal refuse disposal sites and the coal refuse on those sites will serve the purposes of this section, or public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.146. TITLE. Title to land acquired under Section 134.145 shall be in the name of this state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.147. COST OF LAND. The price paid for land acquired under Section 134.145 shall reflect the market value of the land as adversely affected by past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.148. SALE OF ACQUIRED LAND. (a) If land acquired under Section 134.145 is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under rules adopted to ensure

that the land is put to proper use consistent with local plans, if any, as determined by the commission.

(b) The land may be sold only when authorized by the secretary of the interior if federal money was involved in the acquisition of the land to be sold.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.149. HEARING ON SALE. (a) The commission, after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under Section 134.145 is located.

(b) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.150. LIEN. (a) Not later than six months after the date projects to reclaim privately owned land are completed, the commission:

(1) shall itemize the money spent; and

(2) may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a significant increase in property value.

(b) The statement is a lien on the land second only to a property tax lien. The amount of the lien may not exceed the amount determined by either of two appraisals to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(c) A lien may not be filed under this section against the

property of a person who did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 815 (S.B. 1666), Sec. 1, eff. June 15, 2007.

Sec. 134.151. HEARING ON LIEN. Not later than the 60th day after the date the lien is filed, an affected landowner may petition the commission for a hearing on the amount of the lien. The hearing and any appeal shall be conducted under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.152. EMERGENCY POWERS. (a) The commission may spend money available for abandoned mine reclamation for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices on eligible land and water if the commission finds that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) there is not another person who will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b) The commission may enter land where an emergency exists and other land necessary to have access to that land to:

(1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices; and

(2) do the things necessary or expedient to protect the public health, safety, or general welfare.

(c) Entry under this section is an exercise of the police power and not an act of condemnation of property or trespass.

(d) Money spent under this section and the benefits accruing to the premises entered are chargeable against the land and mitigate or

offset a claim for, or an action brought by an owner of an interest in the premises for, damages by virtue of the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

SUBCHAPTER H. ENFORCEMENT

Sec. 134.161. CONDITION, PRACTICE, OR VIOLATION CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall immediately order the cessation of surface coal mining operations or the relevant part of those operations if, after an inspection, the commission or its authorized representative determines that:

(1) a condition exists, a practice exists, or a violation of this chapter or a permit condition required by this chapter exists; and

(2) the condition, practice, or violation:

(A) creates an imminent danger to the health or safety of the public; or

(B) is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission, in addition to the cessation order, shall require the operator to take any steps the commission considers necessary to completely abate the imminent danger to health or safety or significant imminent environmental harm if the commission finds that the ordered cessation will not completely abate the imminent danger or environmental harm.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.162. VIOLATION NOT CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall issue a notice to a permit holder who is violating this chapter or a permit condition required by this chapter and shall set a reasonable time not to exceed 90 days for abating the violation if,

after an inspection, the commission or its authorized representative determines that:

(1) the permit holder is violating this chapter or a permit condition required by this chapter; and

(2) the violation:

(A) does not create an imminent danger to the health or safety of the public; and

(B) is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission or its authorized representative shall order a cessation of surface mining operations or the part of the operations relevant to the violation if:

(1) the time for abatement, as originally set or subsequently extended, expires;

(2) the commission or its authorized representative shows good cause; and

(3) the commission or its authorized representative finds in writing that the violation has not been abated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.163. TERM OF CESSATION ORDER. Except as provided by Section 134.167, a cessation order under Section 134.161 or 134.162 remains in effect until the commission:

(1) determines the condition, practice, or violation has been abated; or

(2) modifies, vacates, or terminates the order under Section 134.166.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(i), eff. Sept. 1, 1997.

Sec. 134.164. CONTINUOUS VIOLATION. (a) The commission shall issue an order to a permit holder promptly to show cause why a permit should not be suspended or revoked if, after an inspection:

(1) the commission has reason to believe that a pattern of

violations of this chapter or of permit conditions required by this chapter exists or has existed; and

(2) the commission or its authorized representative finds that the violations are:

(A) caused by the unwarranted failure of the permit holder to comply with this chapter or the permit conditions; or

(B) wilfully caused by the permit holder.

(b) The order shall set a time, place, and date for a public hearing. The hearing is of record and is subject to Chapter 2001, Government Code.

(c) The commission shall promptly suspend or revoke the permit if the permit holder does not show cause why the permit should not be suspended or revoked.

(d) The permit holder shall immediately stop surface coal mining operations on the permit area and shall complete reclamation within a time specified by the commission if the commission revokes the permit. The commission shall declare the performance bonds for the operation forfeited if the permit holder fails to comply with this subsection.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.165. FORM OF NOTICE OR ORDER. (a) A notice or order issued under Section 134.161, 134.162, or 134.164 shall:

(1) state with reasonable specificity the nature of the violation and the remedial action required;

(2) state the time established for abatement; and

(3) reasonably describe the part of the surface coal mining and reclamation operation to which the notice or order applies.

(b) The commission or its authorized representative shall promptly give the notice or order to the permit holder or the permit holder's agent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.166. MODIFICATION, VACATION, OR TERMINATION OF NOTICE OF ORDER. The commission or its authorized representative may

modify, vacate, or terminate a notice or order issued under Section 134.161, 134.162, or 134.164.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.167. EXPIRATION OF NOTICE OR ORDER. If a notice or order issued under Section 134.161, 134.162, or 134.164 requires the operator to stop mining, the notice or order expires not later than the 30th day after the date of actual notice to the operator unless a public hearing is held at or reasonably near the site so that the site can be viewed during the hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.168. APPLICATION FOR COMMISSION REVIEW OF NOTICE OR ORDER. (a) A permit holder to whom the commission issues a notice or order under Section 134.161 or 134.162 or an affected person may apply to the commission for review of the notice or order not later than the 30th day after the date of receipt of the notice or order or the date the notice or order is modified, vacated, or terminated.

(b) The filing of an application for review under this section does not stay a notice or order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.169. INVESTIGATION AND HEARING ON APPLICATION FOR REVIEW. (a) On receipt of an application filed under Section 134.168, the commission shall investigate as it considers appropriate.

(b) The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the affected person, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order.

(c) The permit holder and other affected persons shall be given

written notice of the time and place of the hearing not later than the sixth day before the date of the hearing.

(d) The hearing is of record and is subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.170. COMMISSION FINDINGS AND DECISION. (a) On receiving the investigation report, the commission shall:

(1) make findings of fact; and

(2) issue a written decision incorporating:

(A) its findings; and

(B) an order vacating, affirming, modifying, or terminating:

(i) the notice or order; or

(ii) the modification, vacation, or termination of the notice or order.

(b) If the application for review concerns a cessation order issued under Section 134.161 or 134.162, the commission shall issue the written decision not later than the 30th day after the date it receives the application for review unless it grants temporary relief under Section 134.171.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.171. REQUEST FOR TEMPORARY RELIEF. (a) Before the investigation and hearing required by Section 134.169 are completed, the applicant may file with the commission a written request that the commission grant temporary relief from a notice or order issued under Section 134.161 or 134.162, together with a detailed statement giving reasons for granting the relief.

(b) The commission shall promptly issue an order or decision granting or denying the relief. If the applicant requests relief from a cessation order issued under Section 134.161 or 134.162, the order or decision on the request shall be issued not later than the fifth day after the date the request is received.

(c) The commission may grant the relief, under conditions

prescribed by the commission, if:

(1) a hearing has been held:

(A) in the locality of the permit area on the request for temporary relief; and

(B) in which all parties have had an opportunity to be heard;

(2) the applicant shows that there is a substantial likelihood that the findings of the commission will favor the applicant; and

(3) the relief will not:

(A) adversely affect the health or safety of the public; or

(B) cause significant, imminent environmental harm to land, air, or water resources.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.172. ASSESSMENT OF COSTS INCURRED IN ADMINISTRATIVE PROCEEDING OR JUDICIAL REVIEW. (a) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter, the commission may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in the action or proceeding.

(b) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter and the commission's decision is appealed, the court may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in judicial review of the action or proceeding.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.173. CIVIL ACTION. (a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permit holder:

(1) violates, fails, or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out Sections 134.161 through 134.172;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to allow an authorized representative to inspect the mine;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to allow access to and copying of records the commission determines reasonably necessary to carry out this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater part of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide appropriate relief.

(d) Relief granted by the court to enforce Subsection (a)(1) continues in effect until the earlier of the date on which:

(1) all proceedings for review of the order are completed or finally terminated; or

(2) the court sets aside or modifies the order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.174. ADMINISTRATIVE PENALTY FOR VIOLATION OF PERMIT CONDITION OF THIS CHAPTER. (a) The commission may assess an administrative penalty against a person who violates a permit condition or this chapter. The commission shall assess an administrative penalty if the violation leads to the issuance of a cessation order.

(b) The penalty may not exceed $10,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the person's history of violations at the particular surface coal mining operation;

(2) the seriousness of the violation, including:

(A) any irreparable harm to the environment; and

(B) any hazard to the health or safety of the public;

(3) whether the person was negligent; and

(4) the demonstrated good faith of the person in attempting to comply rapidly after notification of the violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 431 (S.B. 1667), Sec. 1, eff. September 1, 2007.

Sec. 134.175. PENALTY ASSESSMENT PROCEDURE. (a) The commission may assess an administrative penalty under Section 134.174 only after giving the person charged with a violation an opportunity for a public hearing.

(b) If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty. The decision shall incorporate, if appropriate, an order to pay the penalty.

(c) If appropriate, the commission shall consolidate the hearing with other proceedings under Sections 134.161 through 134.173. A hearing under this section is of record and is subject to Chapter 2001, Government Code.

(d) If the person does not take the opportunity for a public hearing, the commission may assess an administrative penalty after determining that a violation has occurred and the amount of the penalty. The commission shall then issue an order to pay the penalty.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.176. PAYMENT OF PENALTY; REFUND. (a) Not later than

the 30th day after the date the commission issues a notice or order charging that a violation of this chapter has occurred, the commission shall inform the person charged of the proposed amount of the penalty.

(b) Not later than the 30th day after the date the person is informed under Subsection (a), the person shall:

(1) pay the proposed penalty in full; or

(2) forward the proposed amount to the commission for placement in an escrow account if the person wishes to contest the amount of the penalty or the fact of the violation.

(c) If administrative or judicial review of the proposed penalty determines that a violation did not occur or that the amount of the penalty should be reduced, the commission, not later than the 30th day after the date of the determination, shall remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.177. ADMINISTRATIVE PENALTY FOR FAILING TO CORRECT VIOLATION FOR WHICH CITATION HAS BEEN ISSUED. (a) The commission shall assess a person who does not correct a violation for which a citation has been issued under Section 134.161 within the time permitted for its correction an administrative penalty of not less than $750 for each day the violation continues after that time.

(b) If the person initiates a review proceeding in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the person will suffer irreparable loss or damage from the application of those requirements, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the commission enters a final order.

(c) If the person initiates a review proceeding in which a court orders the suspension of an abatement requirement of the citation, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the court enters an order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.178. RECOVERY OF ADMINISTRATIVE PENALTY. The attorney general at the request of the commission may bring a civil action to recover an administrative penalty owed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.179. CRIMINAL PENALTY FOR WILFUL AND KNOWING VIOLATION. (a) A person commits an offense if the person wilfully and knowingly violates a condition of a permit issued under this chapter or does not comply with an order issued under this chapter, except an order incorporated in a decision issued by the commission under Section 134.175.

(b) An offense under this section is punishable by:

(1) a fine of not more than $10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.180. CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense if the person knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification, in an application, record, report, or other document filed or required to be maintained under this chapter or under an order of decision issued by the commission under this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than $10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.181. PENALTY FOR DIRECTOR, OFFICER, OR AGENT OF CORPORATION. (a) If a corporation violates a condition of a permit issued under this chapter or does not comply with an order issued under Section 134.161, 134.162, 134.164, 134.166, 134.170, 134.171, 134.172, or 134.173 or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation or noncompliance is subject to the same administrative penalties, fines, and imprisonment that may be imposed under Sections 134.174 and 134.179.

(b) Subsection (a) does not apply to the violation of an order incorporated in a decision issued by the commission under Section 134.175.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.182. CITIZEN SUIT. (a) Except as provided by Subsection (d), an affected person may bring a civil action to compel compliance with this chapter against:

(1) the commission if the person alleges the commission did not perform a nondiscretionary act under this chapter;

(2) a state governmental instrumentality or agency if the person alleges the instrumentality or agency is violating this chapter or a rule, order, or permit adopted or issued under this chapter; or

(3) any other person if the person alleges the other person is violating a rule, order, or permit adopted or issued under this chapter.

(b) A person who is injured or whose property is damaged by a permit holder's violation of a rule, order, or permit adopted or issued under this chapter may bring an action for damages, including reasonable attorney's and expert witness's fees.

(c) Subsection (b) does not affect the rights established by or limits imposed under the workers' compensation laws of this state.

(d) A person may not bring an action under Subsection (a)(2) or

(3) if the state has brought and is diligently prosecuting a civil action in state or federal court to require compliance with this chapter or a rule, order, or permit adopted or issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.183. NOTICE TO COMMISSION BEFORE BRINGING SUIT; SUIT BY STATE. (a) A person must give written notice to the commission of an action under Section 134.182(a)(1) not later than the 61st day before the date the person brings the action.

(b) The person must give notice under Subsection (a) as prescribed by commission rule.

(c) The person may bring the action immediately after notifying the commission if the violation or order complained of:

(1) constitutes an imminent threat to the health or safety of the person; or

(2) would immediately affect a legal interest of the person.

(d) A person must give written notice of the violation to the commission and any alleged violator not later than the 61st day before the date the person brings an action under Section 134.182(a)(2) or (3).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.184. VENUE. A person may bring an action under Section 134.182 only in the judicial district in which the surface coal mining operation complained of is located.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.185. INTERVENTION BY COMMISSION. The commission may intervene as a matter of right in an action brought under Section 134.182.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.186. COSTS OF SUIT; FILING OF BOND. (a) In issuing a final order in an action brought under Section 134.182(a), a court may award a party litigation costs, including attorney's and expert witness's fees, if the court determines the award is appropriate.

(b) The court may require a person to file a bond or equivalent security in accordance with the Texas Rules of Civil Procedure if the person seeks a temporary restraining order or preliminary injunction.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.187. RIGHTS UNDER OTHER LAW. Sections 134.182 through 134.186 do not restrict any right a person or class of persons may have under a statute or common law to seek enforcement of this chapter and rules adopted under this chapter or to seek other relief, including relief against the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.188. DEFENSE. It is a defense to a civil or criminal penalty under this chapter that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation of this chapter has a written general warranty of ownership of land, separate from any lease, from the person authorizing the operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

TITLE 5. GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES

CHAPTER 141. GEOTHERMAL RESOURCES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 141.001. SHORT TITLE. This chapter may be cited as the Geothermal Resources Act of 1975.

Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.002. DECLARATION OF POLICY. It is declared to be the policy of the State of Texas that:

(1) the rapid and orderly development of geothermal energy and associated resources located within the State of Texas is in the interest of the people of the State of Texas;

(2) in developing the state's geothermal energy and associated resources, the primary purpose is to provide a dependable supply of energy in an efficient manner that avoids waste of the energy resources;

(3) consideration shall be afforded to protection of the environment, to protection of correlative rights, and to conservation of natural resources by all agencies and officials of the State of Texas involved in directing and prescribing rules or orders governing the exploration, development, and production of geothermal energy and associated resources and by-products in Texas;

(4) since geopressured geothermal resources in Texas are an energy resource system, and since an integrated development of components of the resources, including recovery of the energy of the geopressured water without waste, is required for best conservation of these natural resources of the state, all of the resource system components, as defined in this chapter, shall be treated and produced as mineral resources; and

(5) in making the declaration of policy in Subdivision (4) of this section, there is no intent to make any change in the substantive law of this state, and the purpose is to restate the law in clearer terms to make it more accessible and understandable.

Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 394, ch. 185, Sec. 1, eff. Aug. 27, 1979.

Sec. 141.003. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Board" means the School Land Board.

(3) "Commissioner" means the Commissioner of the General

Land Office.

(4) "Geothermal energy and associated resources" means:

(A) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) heat or other associated energy found in geothermal formations; and

(D) any by-product derived from them.

(5) "By-product" means any other element found in a geothermal formation which is brought to the surface, whether or not it is used in geothermal heat or pressure inducing energy generation.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 395, ch. 185, Sec. 2, eff. Aug. 27, 1979.

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

Sec. 141.011. GENERAL DUTY OF THE RAILROAD COMMISSION. Except for duties and responsibilities given to other agencies and officials under this chapter, the commission shall regulate the exploration, development, and production of geothermal energy and associated resources on public and private land for the purpose of conservation and the protection of correlative rights.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.012. RULES. (a) The commission, in consultation with the commissioner and the executive director of the Texas Natural Resource Conservation Commission, shall make, publish, and enforce rules providing for the rapid and orderly exploration, development, and production of geothermal energy and associated resources and to accomplish the purposes of this chapter.

(b) The rules made under this section shall include rules governing:

(1) protection of the environment against damage resulting from the exploration, development, and production of geothermal

energy and associated resources;

(2) prevention of waste of natural resources, including geothermal energy and associated resources, in connection with the exploration, development, and production of geothermal energy and associated resources;

(3) protection of the general public against injury or damage resulting from the exploration, development, and production of geothermal energy and associated resources; and

(4) protection of correlative rights against infringement resulting from the exploration, development, and production of geothermal energy and associated resources.

(c) Rules shall be made and enforced only after a public hearing.

Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.276, eff. Sept. 1, 1995.

Sec. 141.013. ADMINISTRATIVE PENALTY. (a) If a person violates provisions of this title which pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate which pertain to safety or the prevention or control of pollution and are issued under this title, the person may be assessed a civil penalty by the commission.

(b) The penalty may not exceed $10,000 a day for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider the person's history of previous violations of this subchapter or the rules, the seriousness of the violation, any hazard to the health or safety of the public, and the demonstrated good faith of the person.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.014. PENALTY ASSESSMENT PROCEDURE. (a) A civil penalty may be assessed only after the person charged with a violation described under Section 141.013 of this code has been given

an opportunity for a public hearing.

(b) If a public hearing has been held, the commission shall make findings of fact, and it shall issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(c) If appropriate, the commission shall consolidate the hearings with other proceedings.

(d) If the person charged with the violation fails to avail himself of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation did occur and the amount of the penalty that is warranted.

(e) The commission shall then issue an order requiring that the penalty be paid.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.015. PAYMENT OF PENALTY; REFUND. (a) On the issuance of an order finding that a violation has occurred, the commission shall inform the permittee and any other person charged within 30 days of the amount of the penalty.

(b) Within the 30-day period immediately following the day on which the decision or order is final as provided in Subchapter F, Chapter 2001, Government Code, the person charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person seeks judicial review of either the amount of the penalty or the fact of the violation, or both:

(A) forward the amount to the commission for placement in an escrow account; or

(B) in lieu of payment into escrow, post a supersedeas bond with the commission under the following conditions. If the decision or order being appealed is the first final commission decision or order assessing any administrative penalty against the person, the commission shall accept a supersedeas bond. In the case of appeal of any subsequent decision or order assessing any administrative penalty against the person, regardless of the finality of judicial review of any previous decision or order, the commission

may accept a supersedeas bond. Each supersedeas bond shall be for the amount of the penalty and in a form approved by the commission and shall stay the collection of the penalty until all judicial review of the decision or order is final.

(c) If through judicial review of the decision or order it is determined that no violation occurred or that the amount of the penalty should be reduced or not assessed, the commission shall, within the 30-day period immediately following that determination, if the penalty has been paid to the commission, remit the appropriate amount to the person, with accrued interest, or where a supersedeas bond has been posted, the commission shall execute a release of such bond.

(d) Failure to forward the money to the commission within the time provided by Subsection (b) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(e) Judicial review of the order or decision of the commission assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with the district court of Travis County, Texas, and not elsewhere, as provided for in Subchapter G, Chapter 2001, Government Code.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983. Amended by Acts 1995, 74th Leg., ch. 76, Secs. 5.95(53), (59), eff. Sept. 1, 1995.

Sec. 141.016. RECOVERY OF PENALTY. Civil penalties owed under Sections 141.013-141.015 of this code may be recovered in a civil action brought by the attorney general at the request of the commission.

Added by Acts 1983, 68th Leg., p. 1419, ch. 286, Sec. 6, eff. Aug. 29, 1983.

Sec. 141.018. ACCESS TO PROPERTY. Members and employees of the commission, on proper identification, may enter public or private property to inspect and investigate conditions relating to the exploration, development, and production of geothermal energy, to monitor compliance with a rule, permit, or other order of the

commission, or to examine and copy, during reasonable working hours, those records or memoranda of the business being investigated. Members or employees acting under the authority of this section who enter an establishment on public or private property shall observe the establishment's safety, internal security, and fire protection rules.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 10, eff. Sept. 1, 1983. Renumbered from Sec. 141.013 by Acts 1987, 70th Leg., ch. 167, Sec. 5.01(a)(33), eff. Sept. 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

Sec. 141.071. GENERAL AUTHORITY OF COMMISSIONER. To facilitate and encourage the rapid and orderly development of geothermal energy and associated resources, the commissioner may:

(1) provide for the orderly exploration of land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas except as provided in Section 141.077 of this code; and

(2) issue permits and charge reasonable fees for the permits in accordance with rules promulgated under this chapter by the board.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.072. DEPOSIT OF FEES. The fees collected from issuance of the permits shall be deposited in General Land Office Fund 80 and used as the legislature may direct.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.073. LEASE OF PERMANENT SCHOOL FUND LAND. (a) On direction of the commissioner, the board may lease land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas, for the production of geothermal energy and associated resources.

(b) The board has full authority to set the terms and conditions of leases and may adopt rules relating to exploration, development, and production of geothermal energy and associated resources as the board determines to be in the best interest of the state.

(c) The board may require the taking in kind of the state's interest in the geothermal energy and associated resources or its by-products provided from this land.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.074. FURNISHING LISTS OF LAND TO OTHER AGENCIES. Before advertising land for lease, the commissioner shall furnish a list of the tracts considered by the board for lease to the Texas Natural Resource Conservation Commission, the commission, and any other state or federal agency that might have information that would be beneficial to the board in its determination of terms and conditions of the proposed lease.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 11.277, eff. Sept. 1, 1995.

Sec. 141.075. NOTICE OF SALE. Land offered for lease to the public by the board shall be advertised in four daily newspapers in the state that have general circulation at least 30 days in advance of the sale date. The notice shall be published in three issues of each newspaper.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.076. BIDS. (a) Sales of leases shall be made by sealed bids.

(b) The board is entitled to reject any and all bids, but if it accepts a bid, the bid must be determined by the board to be in the best interest of the State of Texas.

Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.077. LEASES AND PERMITS FOR GOVERNMENTAL AGENCIES. (a) The board may grant permits and leases to state and federal institutions, organizations, or groups desiring to do exploratory or experimental research of geothermal energy and associated resource potentials.

(b) These permits and leases may be granted on land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas.

(c) The permits and leases may be issued or granted for research or experimental purposes under rules and conditions the board determines to be in the best interest of the state.

(d) In granting these leases, the commissioner and board do not have to follow the procedures in this subchapter for leasing to the public.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.078. UNIT AGREEMENTS. (a) The board may approve unit agreements of one or more leased tracts on application of the lessees.

(b) Before approving any unit agreement, the board must find that the unit agreement if approved by the board will be in the best interest of the state.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 141.079. REPORT TO LEGISLATURE. Not later than January 1 of each odd-numbered year, the commissioner shall report to the legislature on the status of the exploration, development, and production of geothermal energy and associated resources under the land governed by this subchapter.

Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 86, eff. September 1, 2013.

SUBCHAPTER D. ENFORCEMENT

Sec. 141.101. GENERAL ENFORCEMENT AUTHORITY. (a) In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule, order, or permit of the commission adopted under this chapter in the same manner and subject to the same conditions provided by Chapters 81 and 85 of this code, including the authority to seek and obtain civil penalties and injunctive relief under those chapters.

(b) If the enforcement authority in Section 81.054, Natural Resources Code, is used to institute a civil action alleging a violation of an NPDES permit or the failure to obtain an NPDES permit issued under this chapter, the attorney general may not oppose intervention by a person who has standing to intervene as provided by Rule 60, Texas Rules of Civil Procedure.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 11, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 310, Sec. 7, eff. Aug. 28, 1995.

Sec. 141.102. CRIMINAL PENALTY. (a) A person who knowingly, wilfully, or with criminal negligence violates Subchapter B of this chapter or a rule, order, or permit of the commission issued under that subchapter commits an offense.

(b) An offense under Subsection (a) of this section is punishable by a fine of not more than $10,000 a day for each day a violation is committed.

(c) Venue for prosecution of an alleged violation of this section is in a court of competent jurisdiction in the county in which the violation is alleged to have occurred.

Added by Acts 1983, 68th Leg., p. 5263, ch. 967, Sec. 11, eff. Sept. 1, 1983.

CHAPTER 142. NATURAL ENERGY AND WATER RESOURCES COMPACT

Sec. 142.001. RATIFICATION. The compact set out in Section 142.005 of this code is ratified by this state.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.002. APPOINTMENT OF COMMISSIONERS. When the compact takes effect as provided in Article I, the governor, the lieutenant governor, and the speaker of the house of representatives shall each appoint a commissioner.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.003. TERMS AND OATH OF COMMISSIONERS. (a) Each commissioner serves a term of two years and until his successor is appointed and has qualified.

(b) Each commissioner shall take the constitutional oath of office and shall also take an oath to faithfully perform his duties as commissioner.

(c) If a vacancy occurs in the office of commissioner, the original appointing officer shall appoint a successor to serve for the unexpired portion of the term.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.004. COMPENSATION. Each commissioner is entitled to compensation and reimbursement for expenses as provided by legislative appropriation.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

Sec. 142.005. TEXT OF COMPACT. The compact reads as follows:

Article I. The states of Arkansas, Louisiana, New Mexico,

Oklahoma, and Texas are eligible to ratify this compact. When three of those states have ratified it, the compact takes effect as to those three states. It takes effect as to others of them when they ratify it.

Article II. (a) The purposes of this compact are to:

(1) provide for the conservation and wise utilization of natural energy and water resources by party states;

(2) establish the relative importance of different types of natural energy and water resources being used;

(3) promote comity among the party states and remove causes of present and future controversies;

(4) foster the expeditious development of agriculture and industry in the party states; and

(5) give priority to the exchange of natural energy and water resources among the party states.

(b) To accomplish the purposes of this compact, the party states pledge their mutual cooperation and their intention to develop and execute appropriate programs.

Article III. (a) This compact applies within each party state to individuals, associations, corporations, and governmental and private entities claiming any right to the use of the natural energy or water resources in a party state, except as otherwise provided in this compact.

(b) Each party state agrees that within a reasonable time it may enact laws designed to promote a free flow of natural energy and water resources among all party states. These laws will not apply to states that are not parties to this compact.

Article IV. (a) An administrative agency known as the Interstate Natural Energy and Water Resources Commission is created. Each party state shall appoint, in accordance with its laws, three members of the commission. Members of the commission are known as commissioners.

(b) The commission shall conduct studies and make recommendations to the party states regarding the conservation and wise utilization of natural energy and water resources by those states. It shall recommend to the party states methods of coordinating the exercise of state power to promote maximum conservation and utilization of natural energy and water resources.

(c) The commission may meet as often as it considers necessary, but it must meet at least once each year. At least once each year

the commission shall report its findings and recommendations to the governor and legislature of each party state.

(d) The commission shall organize and adopt rules and bylaws for conducting its business. It shall adopt a seal. The commission may not act on any matter except by an affirmative vote of a majority of all commissioners serving on the commission.

(e) The commission shall elect annually from among its members a chairman, vice-chairman, and treasurer. It shall appoint a director who serves at its pleasure. The director is also secretary of the commission. The director and treasurer shall be bonded in an amount and in a manner determined by the commission. The director is responsible for the appointment and discharge of personnel. He shall establish personnel policies, retirement programs, and employee benefit programs, subject to the approval of the commission.

(f) The commission shall establish and maintain such facilities as it considers necessary for transacting its business.

(g) For the purposes of this compact, the commission may accept and use gifts or grants of money, equipment, or supplies from any public or private legal entity and may accept and use the services of personnel made available to it by any public or private legal entity.

Article V. (a) Nothing in this compact shall be construed as:

(1) affecting the jurisdiction of any interstate agency in which a party state participates;

(2) affecting the provisions of any interstate compact to which a member state is a party, or any obligation of a member state under such a compact;

(3) discouraging additional interstate compacts in which one or more parties to this compact may be a party;

(4) discouraging the coordination of activities regarding a specific natural resource or any aspect of natural resource management;

(5) discouraging the establishment of intergovernmental planning agencies within the area of the states that are party to this compact; or

(6) limiting the jurisdiction or activities of any participating government or any agency or officer of a participating government except as expressly provided in this compact.

Article VI. The commission shall submit to the governor and legislature of each party state a budget of its estimated expenditures for a period of time as is appropriate, based on the

laws of that state. Each budget of estimated expenditures shall contain specific recommendations as to the apportionment of costs among the party states.

Article VII. Any party state may, by legislative act and one year's notice, withdraw from this compact.

Article VIII. The provisions of this compact are severable. If any provision or application of it is held invalid, that does not affect the validity of any other provision or application. The provisions of this compact shall be construed liberally to accomplish its purposes.

Article IX. This compact does not seek to affect political balance within the federal system and shall not be construed as requiring the consent of congress under Article I, Section 10, United States Constitution.

Added by Acts 1979, 66th Leg., p. 2001, ch. 785, Sec. 4, eff. June 13, 1979.

TITLE 6. TIMBER
CHAPTER 151. PROVISIONS GENERALLY APPLICABLE
SUBCHAPTER A. BILL OF SALE FOR PURCHASE OF TREES AND TIMBER

Sec. 151.001. REQUIRED BILL OF SALE. Before purchasing or accepting delivery of any trees, timber, logs, pulpwood, or in-woods chips, a seller shall provide and a purchaser shall require a bill of sale for the trees, timber, logs, pulpwood, or in-woods chips executed by the seller. The bill of sale may be a part of, a compilation of information taken from, or an addendum to, by way of example, a timber deed, scale ticket, weight ticket, cutting contract, harvest agreement, wood purchase agreement, or other records of the sale and purchase made at the time if all the information required by Section 151.002 is included.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.041 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.002. INFORMATION IN BILL OF SALE. (a) The bill of sale, which may be filed of record in the appropriate real property records, shall at a minimum include:

(1) the name of the:

(A) owner of the land from which the trees, timber, logs, pulpwood, or in-woods chips were or are to be obtained;

(B) seller, if the seller is not the owner of the land; and

(C) purchaser;

(2) a description of the survey or tract of land from which the trees, timber, logs, pulpwood, or in-woods chips were or are to be obtained, or information from which the identity of that tract of land may be ascertained, but in any event including the county name;

(3) a general description of the trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale; and

(4) representations and a warranty from the seller that the seller is the lawful owner of all the trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale and that the trees, timber, logs, pulpwood, or in-woods chips are free and clear of all liens, security agreements, encumbrances, claims, demands, and charges.

(b) The purchaser of trees, timber, logs, pulpwood, or in-woods chips conveyed in the bill of sale may, and is entitled to, rely on the information required to be provided by the seller to be incorporated into the bill of sale, as well as on the representations and warranty of the seller.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.042 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.003. RETENTION OF BILL OF SALE. A person that purchases trees, timber, logs, pulpwood, or in-woods chips shall retain the bill of sale for not less than two years following the later of the date of execution of the bill of sale or the expiration date referenced in the bill of sale.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.043 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.004. NOTICE CONCERNING SALE OR PURCHASE OF TREES OR

TIMBER. At each designated point of delivery for trees, timber, logs, pulpwood, or in-woods chips, a wood yard, transfer yard, mill site, or storage yard shall post the following written notice in lettering not less than one inch:

NOTICE CONCERNING SALE OR PURCHASE OF TREES OR TIMBER

1. A seller or purchaser of trees, timber, logs, pulpwood, or in-woods chips who knowingly fails to provide, obtain, or retain a bill of sale as provided in Chapter 151, Natural Resources Code, is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

2. A person, firm, partnership, or corporation adjudged guilty of theft or fraud in connection with the sale or purchase of trees or timber will be punished as provided by the Penal Code.

3. The Texas Forest Service Timber Theft Hotline is 1-800-364-3470.

Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st. Leg., ch. 1248, Sec. 85(5), eff. Sept. 1, 1989. Renumbered from Sec. 151.044 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.005. PENALTY. (a) A seller or purchaser who knowingly fails to provide, obtain, or retain a bill of sale as required by Sections 151.001, 151.002, and 151.003 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

(b) A wood yard, transfer yard, mill site, or storage yard that knowingly fails to post the notice concerning sale or purchase of trees or timber as required by Section 151.004 is guilty of a misdemeanor and on conviction is subject to a fine of not more than $500 for each offense.

Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.045 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.006. APPLICABILITY. This subchapter does not apply to the sale of:

(1) finished wood products;

(2) logs or pulpwood from a wood yard, transfer yard, mill site, or storage yard;

(3) trees from a nursery; or

(4) trees, logs, or pulpwood with a commercial value of less than $250.

Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Renumbered from Sec. 151.046 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.007. PENALTIES CUMULATIVE. A penalty provided by this subchapter is in addition to a penalty provided under other law.

Added by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.008. CIVIL LIABILITY. Nothing in this subchapter shall be construed to affect the liability under any other statute or under common law, provided that failure to comply with the provisions of this subchapter shall not, by itself, create civil liability.

Added by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. UNAUTHORIZED HARVESTING OF TIMBER

Sec. 151.051. DAMAGES FOR UNAUTHORIZED HARVESTING. (a) A person who harvests standing timber with knowledge that the harvesting is without the permission of the owner of the standing timber and a person who causes another person to harvest standing timber without the permission of the owner of the standing timber are jointly and severally liable to the owner for damages in an amount equal to the sum of the mill price of the timber harvested and all reasonable expenses incurred by the owner as a direct result of the unauthorized harvesting.

(b) Payment of damages by a person under this section does not preclude a prosecution of the person under Section 151.005 or 151.052.

(c) This section does not apply to the trimming or clearing of trees in the vicinity of a utility line or right-of-way.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.101 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:
Acts 2011, 82nd Leg., R.S., Ch. 23 (H.B. 613), Sec. 1, eff. September 1, 2011.

Sec. 151.052. CRIMINAL OFFENSE. (a) A person commits an offense if the person:

(1) harvests standing timber with knowledge that the harvesting is without the permission of the owner of the standing timber; or

(2) causes another person to harvest standing timber without the permission of the owner of the standing timber.

(b) An offense under this section is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber harvested is at least $500 but less than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber harvested is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber harvested is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber harvested is at least $200,000.

Added by Acts 2011, 82nd Leg., R.S., Ch. 23 (H.B. 613), Sec. 2, eff. September 1, 2011.

SUBCHAPTER C. PAYMENT FOR TIMBER PURCHASED

Sec. 151.101. DEFINITION. In this subchapter, "timber purchaser" means a person who purchases standing timber for harvest.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.151 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.102. MONEY COLLECTED FOR TIMBER AS TRUST MONEY. Money a timber purchaser collects for harvested timber is trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.152 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.103. TIMBER PURCHASER AS TRUSTEE. A timber purchaser and each officer, director, partner, or agent of a timber purchaser are trustees of trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.153 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.104. BENEFICIARY OF TRUST. Each seller of standing timber is a beneficiary of trust money to the extent of the beneficiary's share of the purchase price for the timber.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.154 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.105. OFFENSE. (a) A trustee commits an offense if the trustee, knowingly or with intent to defraud, directly or indirectly retains, uses, disperses, or otherwise diverts more than $500 of trust money without first fully paying all of the beneficiaries the purchase price for the timber.

(b) A trustee acts with intent to defraud if the trustee retains, uses, disperses, or diverts trust money with the intent to deprive a beneficiary of trust money.

(c) A trustee is presumed to have acted with intent to defraud if the trustee does not pay all of the beneficiaries the purchase price for the timber not later than the 45th day after the date the trustee collects money for the timber.

(d) An offense under this section is:

(1) a state jail felony if it is shown on the trial of the offense that the value of the timber sold is at least $500 but less

than $20,000;

(2) a felony of the third degree if it is shown on the trial of the offense that the value of the timber sold is at least $20,000 but less than $100,000;

(3) a felony of the second degree if it is shown on the trial of the offense that the value of the timber sold is at least $100,000 but less than $200,000; or

(4) a felony of the first degree if it is shown on the trial of the offense that the value of the timber sold is at least $200,000.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 151.155 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 22 (H.B. 612), Sec. 1, eff. September 1, 2011.

Sec. 151.106. DEFENSES TO PROSECUTION. It is an affirmative defense to prosecution under this section that:

(1) the trustee paid the beneficiaries all trust money to which the beneficiaries were entitled not later than the 15th day after the date written notice was given to the trustee at the trustee's most recent address known that a criminal complaint has been filed against the trustee or that a criminal investigation of the trustee is pending; or

(2) two or more persons claim to be beneficiaries of the same trust money, and the trustee has deposited the amount of the disputed trust money into the registry of the district court of the county in which the standing timber was located by action in interpleader or other appropriate legal proceeding for the benefit of persons the district court determines to be entitled to the trust money.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997.
Renumbered from Sec. 151.156 by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

Sec. 151.107. ELECTION OF OFFENSES. If conduct constituting an

offense under Section 151.105 is an offense under another law of this state, the state may elect the offense for which it prosecutes the trustee.

Added by Acts 1997, 75th Leg., ch. 562, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 151.157 and amended by Acts 2001, 77th Leg., ch. 532, Sec. 1, eff. Sept. 1, 2001.

CHAPTER 152. FOREST PEST CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 152.001. POLICY. It is the public policy of the State of Texas to mitigate and control pests threatening forest land in this state in order to protect associated ecological resources, enhance the health and maintenance of forests, promote stability of forest-using industries, ensure public safety, and conserve the ecosystem values of the forest.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 1, eff. September 1, 2017.

Sec. 152.002. PUBLIC NUISANCE. Forest pests are declared to be a public nuisance.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.003. DEFINITIONS. In this chapter:

(1) "Service" means the Texas A&M Forest Service.

(2) "Forest pests" means native insects and diseases, nonnative invasive insects and diseases, and noxious and invasive plants included on a list under Section 71.151, Agriculture Code, that are harmful, injurious, or destructive to forests or trees and whose damage, if uncontrolled, is of considerable economic and environmental importance.

(3) "Forest land" means land with at least 10 percent cover

by live trees of any size, including land that formerly had that amount of tree cover and will be naturally or artificially regenerated, but does not include land within the incorporated limits of a village, town, or city.

(4) "Forest" means the standing trees on forest land.

(5) "Control" means prevent, retard, suppress, eradicate, or destroy.

(6) "Infestation" means actual infestation or infection at conditions beyond normal proportion causing loss to forests.

(7) "Landowner" and "owner" mean a person who owns forest land or has forest land under the person's direction irrespective of ownership.

(8) "Forest owner" means a person who owns the standing trees on forest land, either by a present right or by a future right under the terms of a valid existing contract.

(9) Repealed by Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 17, eff. September 1, 2017.

Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 2, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 17, eff. September 1, 2017.

SUBCHAPTER B. POWERS AND DUTIES OF TEXAS A&M FOREST SERVICE

Sec. 152.011. IN GENERAL. The Texas Forest Service shall administer the provisions of this chapter and make all relevant determinations.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.012. SURVEYS AND INVESTIGATIONS. (a) The service shall make surveys and investigations to determine the existence of infestations of forest pests and means practical for their control by landowners.

(b) Duly delegated representatives of the service may enter

private land and public land, including that held by the United States if permission is obtained, for the purpose of conducting surveys and investigations.

(c) All the service's information shall be available to all interested landowners.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.013. DETERMINATION OF AREA CONTROL MEASURES. If the service finds an infestation existent or threatened in the state, it shall determine:

(1) when control measures are needed;

(2) the nature of the control measures;

(3) availability of control measures; and

(4) the techniques by which the control measures shall be applied.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.014. NOTICE OF FINDING OF INFESTATION. After determining that an infestation exists, the service shall give notice of the fact by:

(1) placing a notice in a newspaper or newspapers in the county or counties in which any infested land is located, or, if there is no newspaper in the county, placing a notice in a newspaper or newspapers with general circulation in the county or counties in which any infested land is located, stating its findings and setting a time and place for a hearing on the need for the control of the pest, to be held not less than 10 days from the date of the notice;

(2) mailing copies of the notice to owners of forest land known to the service to have holdings in the affected area; and

(3) arranging for publicity on the subject by all news media serving the affected area.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.015. HEARING. At the hearing, the agent of the service who presides shall:

(1) describe the conditions that have been found;

(2) explain the measures needed to control the pest infestation;

(3) hear all suggestions and protests; and

(4) record the proceedings.

Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.016. PROCEDURES FOR CONTROL. As soon as practicable after the hearing, the service shall promulgate procedures to be followed for the control of the infestation and shall publish a copy in a newspaper circulated in the affected area in the same manner as publication of preliminary notice.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 4, eff. September 1, 2017.

Sec. 152.017. SPECIFIC CONTROL MEASURES. If the provisions of Sections 152.013 through 152.016 of this code have not been applied and control measures are needed to check the spread of the forest pests on forest land owned or controlled by any person, written notice, signed by a duly authorized representative of the service whose mailing address is shown on the notice, shall be given to the person owning or controlling the forest land.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.018. NOTICE TO SPECIFIC LANDOWNER. (a) The notice required by Section 152.017 shall inform the landowner of:

(1) the facts found to exist;

(2) the landowner's responsibilities for the control

measures;

(3) the control technique recommended;

(4) the law under which control must be accomplished; and

(5) the authority of the service in the event the landowner takes no action toward controlling the pest.

(b) The notice may be given by:

(1) personal delivery to the landowner or the person having control of the forest land;

(2) registered or certified mail directed to the landowner or person having control of the forest land at that person's last known address; or

(3) if the identity or address of the landowner or person having control of the forest land is unknown:

(A) publication in one issue of a newspaper of general circulation in the county in which the land is located; or

(B) posting notice on the county's Internet website or on a bulletin board at a place convenient to the public in the county courthouse for the county in which the land is located.

(c) A published or posted notice under Subsection (b) must include the information specified in Subsection (a), state the name of the owner, if known, and briefly describe the land to which the notice applies.

(d) No other notice is necessary under the provisions of this chapter.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 5, eff. September 1, 2017.

Sec. 152.019. NOTICE TO FOREST OWNER. If the landowner has notified the service of a forest owner under Section 152.064, the service shall furnish the same information to the forest owner that it is required by this chapter to give to the landowner.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 6, eff.

September 1, 2017.

Sec. 152.020. SUPERVISION. (a) A landowner shall inform the service of measures taken by the landowner to control the infestation and the results of those measures.

(b) The service may change its prescribed procedures as conditions or new information may require.

(c) On request, the service shall certify when all reasonably practicable measures to be done by the landowner, pursuant to its prescribed procedures, have been completed.

Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 7, eff. September 1, 2017.

Sec. 152.021. CONTROL MEASURES APPLIED BY SERVICE. If the landowner or another person fails to apply the pest control measures prescribed by the service not later than the 10th day after the date notice is given under Section 152.014 or 152.018, the service may contact the landowner to offer further assistance or may enter the land and have the forest pests controlled.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 8, eff. September 1, 2017.

Sec. 152.022. EXPENSE OF CONTROL MEASURES TAKEN BY SERVICE. (a) The landowner shall pay all charges and expenses of control measures taken by the service.

(b) The service shall charge amounts consistent with current commercial rates for control measures taken by the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 9, eff. September 1, 2017.

Sec. 152.023. CLAIM AGAINST LANDOWNER. The amount charged for control measures taken by the service constitutes a legal claim against the landowner, but does not constitute a lien on any land owned by the landowner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 10, eff. September 1, 2017.

Sec. 152.024. SUIT. The attorney general may bring suit on behalf of the service in the county in which the infestation occurred to recover the claim against the landowner, together with all costs incurred in the suit.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.025. LANDOWNER REIMBURSEMENT. (a) If the landowner has notified the service of a forest owner under Section 152.064, the landowner is entitled to reasonable reimbursement from the forest owner for amounts:

(1) spent by the landowner for pest control measures under Section 152.062; or

(2) paid on a legal claim under Sections 152.022 through 152.024.

(b) The amount of reimbursement paid by a forest owner under Subsection (a) shall be proportional to the interest owned in the forest by the forest owner.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 11, eff. September 1, 2017.

Sec. 152.026. COOPERATIVE AGREEMENTS. The service may enter into cooperative agreements with private landowners or forest owners, the federal government, or other public or private agencies to accomplish the control of forest pests.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. POWERS AND DUTIES OF THE LANDOWNER

Sec. 152.061. GENERAL DUTY OF LANDOWNER. Each owner of forest land shall control the forest pests on land owned by the person or under the person's direction as provided in this chapter.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 12, eff. September 1, 2017.

Sec. 152.062. DUTY TO APPLY CONTROL MEASURES. Not later than the 10th day after the date notice is given under Section 152.014 or 152.018, each affected landowner shall commence diligently to take measures to control the infestation as prescribed and continue this activity with all practical expedition and efficiency under the direction of the service.

Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 13, eff. September 1, 2017.

Sec. 152.063. REPORTS AND CONSULTATION WITH SERVICE. (a) The landowner shall notify the service of the landowner's actions and the

result of those actions.

(b) The landowner may report to and consult with a representative of the service as often as necessary.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 14, eff. September 1, 2017.

Sec. 152.064. NOTIFYING SERVICE OF FOREST OWNER. If all or part of the standing trees are owned by someone other than the landowner, either by a present right or by a future right under the terms of a valid existing contract, the landowner shall notify the service of that fact and furnish the name and address of each forest owner not later than the 10th day after the date the landowner receives notice from the service under Section 152.014 or 152.018.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 15, eff. September 1, 2017.

SUBCHAPTER D. JUDICIAL REVIEW

Sec. 152.101. JUDICIAL REVIEW OF SERVICE NOTICE. A landowner or person having control of forest land who is aggrieved by the notice given by the service is entitled to seek relief but only if the proceedings to obtain the relief are initiated within 10 days from the time notice is given, exclusive of the date the notice is given.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.102. VENUE. The proceeding to obtain relief shall be in the district court of the county in which the land is located.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.103. CONTROL MEASURES PENDING LITIGATION. The service shall not proceed with any control measures while the litigation is pending unless permission to do so is given by the court on a showing of probable harm due to a delay in using the control measures.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 152.105. INJUNCTIVE RELIEF FOR LANDOWNER. If the final judgment in an action seeking relief from a notice is in favor of the landowner, the landowner may be entitled to injunctive relief against the use of any control measures on the landowner's forest land by the service until a time determined by the court.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2017, 85th Leg., R.S., Ch. 859 (H.B. 2567), Sec. 16, eff. September 1, 2017.

Sec. 152.106. NOTICE FINAL. If the final judgment is against the landowner, or if the landowner fails to seek relief in the district court of the county in which the land is located, the notice from the service is final, and the service shall summarily take the measures necessary to control the infestation.

Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

CHAPTER 153. PRESCRIBED BURNING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 153.001. DEFINITIONS. In this chapter:

(1) "Board" means the Prescribed Burning Board.

(2) "Department" means the Department of Agriculture.

(3) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 6, eff. September 1, 2019.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.01, eff. September 1, 2009.
Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 3, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 6, eff. September 1, 2019.

Sec. 153.002. LANDOWNER'S RIGHT TO CONDUCT BURNS NOT LIMITED. This chapter does not limit a landowner's right to conduct burns on the landowner's property.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.003. LIABILITY. This chapter does not modify a landowner's liability for property damage, personal injury, or death resulting from a burn that is not conducted as provided by this chapter.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.004. PRESCRIBED BURNING IN STATE OF EMERGENCY OR DISASTER. A certified and insured prescribed burn manager may conduct a burn in a county in which a state of emergency or state of disaster has been declared by the governor or the president of the United States, unless the declaration expressly prohibits all outdoor burning.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.02, eff. September 1, 2009.
Amended by:
Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 4, eff. September 1, 2015.
Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff.

September 1, 2019.

SUBCHAPTER B. PRESCRIBED BURNING BOARD

Sec. 153.041. ESTABLISHMENT. (a) The Prescribed Burning Board is established within the department and is composed of:

(1) an employee of the Texas Forest Service designated by the director of the Texas Forest Service;

(2) an employee of the Parks and Wildlife Department appointed by the executive director of the Parks and Wildlife Department;

(3) an employee of the Texas Commission on Environmental Quality appointed by the executive director of the Texas Commission on Environmental Quality;

(4) an employee of the Texas AgriLife Extension Service appointed by the executive director of the Texas AgriLife Extension Service;

(5) an employee of Texas AgriLife Research appointed by the director of Texas AgriLife Research;

(6) an employee of the Texas Tech University Range and Wildlife Department appointed by the dean of the Texas Tech University College of Agricultural Sciences and Natural Resources;

(7) an employee of the department appointed by the commissioner of agriculture;

(8) an employee of the State Soil and Water Conservation Board appointed by the executive director of the State Soil and Water Conservation Board; and

(9) five persons who are:

(A) owners of agricultural land, as that term is defined by Section 153.081;

(B) self-employed or employed by a person other than a governmental entity; and

(C) appointed by the commissioner of agriculture.

(b) A member serves for a two-year term.

(c) The board shall, by majority vote, elect a presiding officer from the members of the board.

(d) Appointments to the board shall be made without regard to the race, creed, sex, disability, age, religion, or national origin of the appointees.

(e) It is a ground for removal from the board that a member:

(1) does not have at the time of appointment the qualifications required by Subsection (a) for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Subsection (a) for appointment to the board;

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

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

(f) The validity of an action of the board is not affected by the fact that it was taken when a ground for removal of a member of the board existed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.03, eff. September 1, 2009.

Sec. 153.042. INFORMATION RELATING TO STANDARDS OF CONDUCT. The presiding officer of the board or the presiding officer's designee shall provide to members of the board, as often as necessary, information regarding their qualification for office under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.043. MEMBER TRAINING. (a) A person appointed to the board is not eligible for membership on the board unless the person completes at least one training program that complies with this section.

(b) The training program must provide information to the member regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the requirements of Chapters 551, 552, and 2001, Government Code;

(5) the requirements of the conflict of interest laws and other laws relating to public officials; and

(6) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement for travel expenses incurred in attending the training program as provided by the General Appropriations Act as if the person were a member of the board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.044. SUNSET PROVISION. The Prescribed Burning Board is subject to Chapter 325, Government Code (Texas Sunset Act). The board shall be reviewed during the period in which the Department of Agriculture is reviewed.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2003, 78th Leg., ch. 1112, Sec. 2.04, eff. Sept. 1, 2003.
Amended by:

Acts 2005, 79th Leg., Ch. 1227 (H.B. 1116), Sec. 3.05, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 928 (H.B. 3249), Sec. 2.04, eff. June 15, 2007.

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.04, eff. September 1, 2009.

Sec. 153.045. ADVISORY BOARD. (a) The board shall establish an advisory board of members of the public, including individuals representing:

(1) property owners;

(2) agriculture, forestry, and livestock producers;

(3) conservation interests;

(4) environmental interests; and

(5) insurance interests.

(b) The board shall determine the number of persons and manner

of selection of the advisory board.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.

Sec. 153.046. DUTIES. The board shall:

(1) establish standards for prescribed burning;

(2) develop a comprehensive training curriculum for certified and insured prescribed burn managers;

(3) establish standards for certification, recertification, and training for certified and insured prescribed burn managers;

(4) establish minimum education and professional requirements for instructors for the approved curriculum; and

(5) establish insurance requirements for certified and insured prescribed burn managers in amounts not less than those required by Section 153.082.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.05, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 1, eff. September 1, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 5, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff. September 1, 2019.

Sec. 153.047. PRESCRIBED BURNING STANDARDS. Minimum standards established by the board for prescribed burning must:

(1) ensure that prescribed burning is the controlled application of fire to naturally occurring or naturalized vegetative fuels under specified environmental conditions in accordance with a written prescription plan:

(A) designed to confine the fire to a predetermined area and to accomplish planned land management objectives; and

(B) that conforms to the standards established under this section;

(2) require that at least one certified and insured prescribed burn manager is present on site during the conduct of the

prescribed burn;

(3) establish appropriate guidelines for size of burning crews sufficient to:

(A) conduct the burn in accordance with the prescription plan; and

(B) provide adequate protection for the safety of persons and of adjacent property;

(4) include standards for notification to adjacent land owners, the Texas Commission on Environmental Quality, and local fire authorities; and

(5) include minimum insurance requirements for certified and insured prescribed burn managers.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.06, eff. September 1, 2009.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 6, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 2, eff. September 1, 2019.

Sec. 153.048. CERTIFIED AND INSURED PRESCRIBED BURN MANAGERS. (a) Minimum standards established by the board for certification as a certified and insured prescribed burn manager must require the completion of the approved training curriculum to be developed and promulgated by the board and taught by an approved instructor.

(b) The board shall certify a person as a certified and insured prescribed burn manager if the person:

(1) applies to the board for certification;

(2) demonstrates completion of an approved training program by an approved instructor;

(3) pays a fee to the board in an amount determined by the board; and

(4) meets the insurance requirements established by the board under Section 153.046.

(c) The certification is for two years.

(d) A person may renew certification only by completing a continuing education program established by the board.

(e) The board shall maintain a register of certified and insured prescribed burn managers and dates of completion of initial and continuing training.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.07, eff. September 1, 2009.
Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 2, eff. September 1, 2013.
Acts 2013, 83rd Leg., R.S., Ch. 565 (S.B. 702), Sec. 3, eff. September 1, 2013.

SUBCHAPTER C. LIMITATIONS ON LIABILITY

Sec. 153.081. LIMITATION OF OWNER LIABILITY. (a) Subject to Section 153.082, an owner, lessee, or occupant of agricultural or conservation land is not liable for property damage or for injury or death to persons caused by or resulting from prescribed burning conducted on the land owned by, leased by, or occupied by the person if the prescribed burning is conducted under the supervision of a certified and insured prescribed burn manager.

(b) This section does not apply to an owner, lessee, or occupant of agricultural or conservation land who is a certified and insured prescribed burn manager and conducts a burn on that land.

(c) In this section, "agricultural or conservation land" means land that is located in this state and that is suitable for:

(1) use and production of plants and fruits for human or animal consumption or plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed;

(2) forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items used for industrial, commercial, or personal consumption;

(3) domestic or native farm or ranch animals kept for use or profit;

(4) management of native or exotic wildlife; or

(5) conservation or management of an ecosystem, a forest, a habitat, a species, water, or wildlife.

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.08, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. 764), Sec. 1, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 8, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 3, eff. September 1, 2019.

Sec. 153.082. INSURANCE. The limitation on liability under Section 153.081 does not apply to an owner, lessee, or occupant of agricultural or conservation land unless:

(1) the burn is conducted under the supervision of a certified and insured prescribed burn manager who has liability insurance coverage:

(A) of at least $1 million for each single occurrence of bodily injury or death, or injury to or destruction of property; and

(B) with a policy period minimum aggregate limit of at least $2 million; or

(2) the owner, lessee, or occupant is a governmental unit, as that term is defined by Section 2259.001, Government Code, that has a self-insurance program that provides the amount of coverage required by Subdivision (1).

Added by Acts 1999, 76th Leg., ch. 1432, Sec. 1, eff. Sept. 1, 1999.
Amended by Acts 2001, 77th Leg., ch. 829, Sec. 1, eff. Sept. 1, 2001.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.09, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 196 (S.B. 764), Sec. 2, eff. May 25, 2013.

Acts 2015, 84th Leg., R.S., Ch. 169 (H.B. 2119), Sec. 9, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 4, eff. September 1, 2019.

Sec. 153.083. LIABILITY REGARDING CERTAIN PRESCRIBED BURNS.

(a) In this section, "burn boss" means an individual responsible for directing a prescribed burn under a written prescription plan described by Section 153.047.

(b) Except as provided by Subsection (c), if a prescribed burn is conducted in accordance with a written prescription plan described by Subsection (d) and Section 153.047, a person may be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:

(1) is the burn boss; and

(2) is otherwise liable under other law.

(c) Subject to Sections 153.081 and 153.082, a person other than the burn boss, including a person assisting or acting under the direction of the burn boss, may be held liable for property damage, personal injury, or death caused by or resulting from the burn only if the person:

(1) commits gross negligence or intentionally causes the property damage, personal injury, or death; and

(2) is otherwise liable under other law.

(d) For purposes of this section, if the burn boss is not the owner, lessee, or occupant of the land on which the burn is conducted, the written prescription plan must include:

(1) the signature of:

(A) the burn boss; or

(B) the owner, lessee, or occupant of the land on which the burn is conducted; and

(2) a contract acknowledging liability.

(e) Nothing in this section may be construed to create a cause of action or to create a standard of care, obligation, or duty that forms the basis of a cause of action.

Added by Acts 2019, 86th Leg., R.S., Ch. 1096 (H.B. 2053), Sec. 5, eff. September 1, 2019.

SUBCHAPTER D. COMPLAINTS, ENFORCEMENT, AND PENALTIES

Sec. 153.101. COMPLAINTS. The department shall receive and process complaints concerning certified and insured prescribed burn managers in the manner described by Section 12.026, Agriculture Code, and rules adopted under that section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10,

eff. September 1, 2009.

Sec. 153.102. DISCIPLINARY ACTION; SCHEDULE OF SANCTIONS. (a) The department may impose an administrative sanction, including an administrative penalty, as provided by Sections 12.020, 12.0201, 12.0202, and 12.0261, Agriculture Code, for a violation of this chapter.

(b) The department by rule shall adopt a schedule of the disciplinary sanctions that the department may impose under this chapter. In adopting the schedule of sanctions, the department shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

(c) In determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the department shall consider:

(1) whether the person:

(A) is being disciplined for multiple violations of either this chapter or a rule or order adopted under this chapter; or

(B) has previously been the subject of disciplinary action by the department under this chapter and has previously complied with department rules and this chapter;

(2) the seriousness of the violation;

(3) the threat to public safety; and

(4) any mitigating factors.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.

Sec. 153.103. INJUNCTION. (a) The department may apply to a district court in any county for an injunction to restrain a person who is not a certified and insured prescribed burn manager from representing that the person is a certified and insured prescribed burn manager.

(b) At the request of the department, the attorney general shall initiate and conduct an action in a district court in the state's name to obtain an injunction under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10,

eff. September 1, 2009.

Sec. 153.104. EMERGENCY SUSPENSION. (a) On determining that a certification holder is engaged in or about to engage in a violation of this chapter and that the certification holder's continued practice constitutes an immediate threat to the public welfare, the department may issue an order suspending the certification holder's certification without notice or a hearing. The department shall immediately serve notice of the suspension on the certification holder.

(b) The notice required by Subsection (a) must:

(1) be personally served on the certification holder or be sent by registered or certified mail, return receipt requested, to the certification holder's last known address according to the department's records;

(2) state the grounds for the suspension; and

(3) inform the certification holder of the right to a hearing on the suspension order.

(c) A certification holder whose certification is suspended under this section is entitled to request a hearing on the suspension not later than the 30th day after the date of receipt of notice of the suspension. Not later than the fifth day after the date a hearing is requested, the department shall issue a notice of hearing.

(d) A hearing on a suspension order under this section is subject to Chapter 2001, Government Code. If the hearing is before an administrative law judge, after the hearing, the administrative law judge shall recommend to the department whether to uphold, vacate, or modify the suspension order.

(e) A suspension order issued under this section remains in effect until further action is taken by the department. If the administrative law judge's recommendation under Subsection (d) is to vacate the order, the department shall determine whether to vacate the order not later than the second day after the date of the recommendation.

Added by Acts 2009, 81st Leg., R.S., Ch. 506 (S.B. 1016), Sec. 2.10, eff. September 1, 2009.

TITLE 7. RESOURCES PROGRAMS
CHAPTER 161. VETERANS LAND BOARD
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 161.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Land office" means the General Land Office.

(4) "Program" means the Veterans' Land Program.

(5) "Fund" means the veterans' land fund.

(6) "Bonds" means general obligation bonds issued by the board for the purpose of funding the program.

(7) "Veteran" means a person who:

(A)(i) served not less than 90 days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard, United States Public Health Service (as constituted under 42 U.S.C. Section 201 et seq.), or Marine Corps of the United States after September 16, 1940, and who on the date of filing an application under the program has not been dishonorably discharged from the branch of the service in which the person served;

(ii) has at least 20 years of active or reserve military service as computed when determining the person's eligibility to receive retired pay under applicable federal law;

(iii) has enlisted or received an appointment in the Texas National Guard, who has completed all initial active duty training required as a condition of the enlistment or appointment, and who on the date of filing the person's application has not been dishonorably discharged from the Texas National Guard; or

(iv) served in the armed forces of the Republic of Vietnam between February 28, 1961, and May 7, 1975, if the board adopts a rule regarding these veterans under Subsection (b);

(B) at the time of the person's enlistment, induction, commissioning, appointment, or drafting was a bona fide resident of this state or has resided in this state at least one year immediately before the date of filing an application under this chapter; and

(C) at the time of the person's application under this chapter is a bona fide resident of this state. The term includes the unmarried surviving spouse of a veteran who died or who is identified as missing in action if the deceased or missing veteran meets the

requirements of this section, with the exception that the deceased or missing veteran need not have served 90 days under Paragraph (A)(i) of this subdivision, and if the deceased or missing veteran was a bona fide resident of this state at the time of enlistment, induction, commissioning, appointment, or drafting.

(8) "Commission" means the Texas Veterans Commission.

(b) Notwithstanding Subdivision (7) of Subsection (a) of this section, the board may by rule change the definition of "veteran" as necessary or appropriate to protect the best interests of the program. If the board adopts a rule to change the definition of "veteran" to include a person who served in the armed forces of the Republic of Vietnam between February 28, 1961, and May 7, 1975, the rule must include procedures for establishing proof of that service.

(c) For purposes of this section, a person who has been discharged from the branch of the service in which the person served or from the Texas National Guard is considered not to have been dishonorably discharged if the person:

(1) received an honorable discharge;

(2) received a discharge under honorable conditions; or

(3) received a discharge and provides evidence from the United States Department of Veterans Affairs, its successor, or other competent authority that indicates that the character of the person's duty has been determined to be other than dishonorable.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 1; Acts 1989, 71st Leg., ch. 298, Sec. 1, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 1.01, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 83, Sec. 1, eff. May 11, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 1, 2, eff. June 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 17 (S.B. 581), Sec. 3, eff. September 1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 1, eff. June 15, 2007.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 161.011. VETERANS LAND BOARD DESIGNATED. The Veterans Land Board is a state agency designated to perform the governmental

functions authorized in Article III, Section 49-b of the Texas Constitution.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.0111. SUNSET PROVISION. The Veterans' Land Board is subject to review under Chapter 325, Government Code (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2031 are reviewed and every 12th year after that.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 2, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.20(42), eff. Sept. 1, 1987; Acts 1991, 72nd Leg., 1st C.S., ch. 17, Sec. 3.08, eff. Nov. 12, 1991; Acts 1995, 74th Leg., ch. 970, Sec. 2.03, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1169, Sec. 2.10, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1481, Sec. 2.04, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1112, Sec. 2.05, eff. Sept. 1, 2003. Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 2, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 1, eff. September 1, 2019.

Sec. 161.013. EXECUTIVE SECRETARY AND ASSISTANT EXECUTIVE SECRETARY. (a) The board shall select an executive secretary and an assistant executive secretary, each of whom shall be nominated by the commissioner and approved by a majority of the board.

(b) The executive secretary and assistant executive secretary shall perform all duties required of them by the board.

Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.014. EMPLOYEES. (a) The commissioner may employ all other employees that may be necessary for the discharge of the board's duties. The employees may include stenographers, typists,

bookkeepers, surveyors, appraisers, and other employees in the number and for the time necessary to perform these duties.

(b) The employees of the board are considered to be employees of the land office, and civil and criminal laws regulating the conduct and relations of the employees of the land office apply to the employees of the board.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.0141. SEPARATION OF RESPONSIBILITIES. The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive secretary, assistant executive secretary, and staff of the board.

Added by Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 2, eff. September 1, 2019.

Sec. 161.015. COMPENSATION AND DUTIES OF EMPLOYEES. The employees of the board shall be paid their compensation and shall perform their duties with the same rules and requirements of the general law governing other state employees in those respects.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.016. FISCAL AGENT. (a) The board may designate the comptroller as the fiscal agent for payment of principal of and interest on the bonds.

(b) The comptroller shall act as fiscal agent without compensation.

(c) In the alternative, the board may employ a private fiscal agent to perform these services and shall pay him adequate compensation.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.16, eff.

Sept. 1, 1997.

Sec. 161.017. MEETINGS OF BOARD. (a) When necessary, the board shall meet on the first and third Tuesdays of each month in the land office, where its session shall be held and continue until its docket is cleared. The board may recess at its own discretion.

(b) The chairman of the board may call special meetings of the board at any time he thinks necessary by giving the other members notice.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.018. MINUTES OF BOARD. Minutes of each meeting of the board shall be kept, and only those matters that actually transpire at the meeting shall be entered in the minutes.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.019. DEPOSITORY FOR PAPERS, RECORDS, AND ARCHIVES. Papers, records, and archives of the board shall be deposited and kept in the land office.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.020. PURCHASE OF SUPPLIES. The board may purchase at state expense through the comptroller supplies, including stationery, stamps, printing, record books, and other things that may be needed to carry on the board's functions as a state agency in performing the duties imposed by this chapter.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 937 (H.B. 3560), Sec. 1.105, eff.

September 1, 2007.

Sec. 161.021. SEAL. The board shall procure and adopt a seal bearing the words "Veterans Land Board" encircled by the oak and olive branches common to other official seals.

Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.022. CHAPTER APPLICATION TO SUCCESSOR BOARDS. The provisions of this chapter shall apply to any successor of the board.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.023. TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing board operations;

(2) the programs, functions, rules, and budget of the board;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the board;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest; and

(B) other laws applicable to members of a state policy-making body in performing their duties; and

(6) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to

reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The commissioner shall create a training manual that includes the information required by Subsection (b). The commissioner shall distribute a copy of the training manual annually to each member of the board. Each member of the board shall sign and submit to the commissioner a statement acknowledging that the member has received and reviewed the training manual.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 3, eff. September 1, 2019.

Sec. 161.024. CONFLICTS OF INTEREST. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be an appointed member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of real property sales, brokerage, or development; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of real property sales, brokerage, or development.

(c) A person may not be an appointed member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of

the person's activities for compensation on behalf of a profession related to the operation of the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by Acts 1987, 70th Leg., ch. 167, Sec. 2.19(22), eff. Sept. 1, 1987.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.025. EQUAL PROTECTION FOR BOARD MEMBERS. Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.026. REMOVAL OF BOARD MEMBER. (a) It is a ground for removal from the board if an appointed member:

(1) does not have at the time of appointment the qualifications required by Article III, Section 49-b, of the Texas Constitution for appointment to the board;

(2) does not maintain during the service on the board the qualifications required by Article III, Section 49-b, of the Texas Constitution for appointment to the board;

(3) is ineligible for membership under Section 161.024;

(4) is unable to discharge his duties for a substantial portion of the term for which he was appointed because of illness or disability; or

(5) is absent from more than one-half of the regularly scheduled board meetings which the member is eligible to attend during each calendar year, except when the absence is excused by a majority vote of the board.

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

(c) If the executive secretary has knowledge that a potential

ground for removal exists, the executive secretary shall notify the presiding officer of the board of the potential ground. The presiding officer of the board shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive secretary shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.028. CAREER LADDER. (a) The executive secretary or his designee shall develop an intraagency career ladder program, one part of which shall require the intraagency posting of all nonentry level positions concurrently with any public posting.

(b) The program and posting requirements of this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.029. PERFORMANCE EVALUATIONS. (a) The executive secretary or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this section.

(b) The evaluations required by this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.030. AUDIT. The financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by Acts 1989, 71st Leg., ch. 584, Sec. 8, eff. Sept. 1, 1989.

Sec. 161.0301. INTERNAL AUDITOR. An internal auditor who performs an audit function for the board shall:

(1) submit to the board any parts of the applicable internal audit plan that relate to the board; and

(2) report to the board regarding the results of any internal audits that relate to the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.031. EQUAL EMPLOYMENT OPPORTUNITY. (a) The executive secretary or his or her designee shall prepare and maintain a written plan to assure implementation of a program of equal employment opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The plan shall include:

(1) a comprehensive analysis which meets federal and state guidelines of all the agency's work force by race, sex, ethnic origin, class of position, and salary or wages;

(2) plans for recruitment, evaluation, selection, appointment, training, promotion, and other personnel policies;

(3) procedures by which a determination can be made of significant underutilization in the agency work force of all persons for whom federal and state guidelines encourage a more equitable balance and steps reasonably designed to overcome any identified underutilization; and

(4) objectives and goals, with appropriate timetables for the achievement of the objectives and goals, assignments of responsibility for their achievement, and an appropriate program for reviewing and maintaining these goals and objectives once achieved.

(b) The plan shall be filed with the governor's office within 60 days of the effective date of this Act, cover an annual period, and be updated at least annually. The governor's office shall develop a biennial report to the legislature based on the information submitted. Such report may be made separately or as a part of other

biennial reports made to the legislature.

(c) The personnel transactions referred to in Subsection (a) of this section apply to the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.
Amended by:

Acts 2019, 86th Leg., R.S., Ch. 523 (S.B. 607), Sec. 4, eff. September 1, 2019.

Sec. 161.032. STANDARDS OF CONDUCT. (a) The board shall provide to its members and employees as often as is necessary information regarding their qualifications under this chapter and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The employees referred to in Subsection (a) of this section are the employees of the board and the employees of the land office that support the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.033. PUBLIC DEBATE BEFORE BOARD. The board shall develop and implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 3, eff. Sept. 1, 1985.

Sec. 161.034. COMPLAINTS. (a) The board shall maintain a system to promptly and efficiently act on complaints filed with the board. The board shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) The board shall make information available describing its procedures for complaint investigation and resolution.

(c) The board shall periodically notify the complaint parties of the status of the complaint until final disposition.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.035. USE OF TECHNOLOGY. The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

Sec. 161.036. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction, other than disputes governed by Section 161.311.

(b) The board's procedures relating to alternative dispute resolution shall conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 3, eff. June 15, 2007.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 161.061. GENERAL DUTIES OF BOARD. The board shall:

(1) authorize and execute negotiable bonds as provided by law;

(2) provide by resolution for use of the fund in a manner that will effectuate the intent of the constitution and the law;

(3) prescribe the interest rates as provided by law;

(4) provide for the forfeiture of contracts of sale and purchase and resale of forfeited land;

(5) conduct investigations it considers necessary;

(6) obtain and review any components of internal audit plans that relate to board functions and approve those plans as appropriate during public meetings of the board;

(7) obtain and review any internal audit reports that relate to board functions and discuss those reports during public meetings of the board; and

(8) formulate policies and rules necessary and not in conflict with the law to ensure the proper administration and to carry out the intent and purposes of the law.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.02, eff. Aug. 30, 1993.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.062. GENERAL DUTIES OF COMMISSIONER. The commissioner is the chairman of the board and administrator of the program as provided in Article III, Section 49-b of the Texas Constitution, and shall perform the duties and functions of the board prescribed by law except for those duties and functions provided in Section 161.061 of this code, which shall be performed by the board.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.063. RULES. (a) The board may adopt rules that are not inconsistent with this chapter and that it considers necessary or advisable. The board shall adopt rules and procedures that it

considers necessary to ensure the integrity of the program.

(b) The rules shall be considered a part of this chapter and violation of the rules subject the offender to prosecution under Sections 161.401 through 161.403 of this code.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 4, eff. Sept. 1, 1985.

Sec. 161.064. BOARD AUTHORITY TO MAKE INVESTIGATIONS. The board may make any investigation it considers necessary relating to transactions involving land purchases or sales under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.065. OATHS; BOOKS, RECORDS, AND DOCUMENTS. (a) The board is specifically authorized to administer oaths and to examine the books, records, or other documents dealing with or relating to the transactions of any person involved in the transaction.

(b) The board may make copies of the books, records, and other documents that in its judgment may show or tend to show fraud on the board or a veteran or a violation or attempted violation under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.066. SUBPOENA DUCES TECUM. The board may issue a subpoena duces tecum to require a person to produce books, records, or any other documents for the board's examination.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.067. FORFEITURE OF CHARTER AND RIGHTS. (a) If a corporation fails or refuses to comply with the orders of the board

under Sections 161.064 through 161.066 of this code, the corporation shall forfeit its right to do business in this state, and its permit or charter shall be canceled or forfeited by the attorney general.

(b) The failure or refusal by a person is presumed to be prima facie evidence of fraud on the board and veteran in violation of this chapter, and the person shall lose and forfeit all rights and benefits under this chapter.

Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.068. FORM OF INSTRUMENTS. The board may prescribe the form and contents of notices, bids, applications, awards, contracts, deeds, and instruments used by the board in carrying out a project or plan if it is not in conflict with the law.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.069. FEES. (a) The board shall collect the fee it considers necessary from each applicant under Subchapter G of this chapter and deposit the fee in a bank. Interest received on the deposit shall be credited to the General Land Office special fund and shall be spent for administrative purposes.

(b) Repealed by Acts 1985, 69th Leg., ch. 798, Sec. 22, eff. Sept. 1, 1985.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 22, eff. Sept. 1, 1985.

Sec. 161.070. ADDITIONAL FEES. (a) The board shall set and collect, for the use of the state, reasonable fees in amounts determined by the board for services it may provide in connection with processing and servicing of purchase applications and contracts of sale and purchase and matters incidental to these purchases. These fees may include but are not limited to the following:

(1) appraisal fee for each application under Subchapter G

of this chapter;

(2) contract of sale and purchase transfer fee for each transfer;

(3) mineral lease service fee for each lease executed by purchasers;

(4) reappraisal fee, if required by the board;

(5) fee for each loan of abstract;

(6) fee for servicing and filing each easement;

(7) service fee for each contract of sale and purchase;

(8) fee for homesite, severance, or paid-in-full deed;

(9) title examination fee;

(10) recording fees;

(11) fee for preparing credit reports;

(12) fee from each successful bidder under Section 161.319 of this code in an amount sufficient to pay for examination of title, recording fees, and other expenses incidental to resale of land under Section 161.319 of this code;

(13) fee for preparation of legal instruments, including but not limited to deeds, contracts, affidavits, and curative instruments;

(14) fee for legal research, including but not limited to preparation of title opinions and other legal opinions, preparation for court appearances;

(15) fee for general research, including but not limited to preparation of certified copies of documents on file with the board; and

(16) fees for any other services which may be requested of the board.

(b) These fees may be added to the price of any land sold or resold by the board.

(c) Fees or portions of fees that are in the opinion of the board unused shall be refunded.

(d) Money received from payment of these fees and not refunded shall be deposited in the State Treasury and credited to the fund and shall be spent as provided in the General Appropriations Act.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 406, ch. 81, Sec. 21(o), eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 798, Sec. 5, eff. Sept. 1, 1985.

Sec. 161.071. PAMPHLETS. The board shall have published pamphlets containing the provisions of this chapter and rules the board desires, and these pamphlets shall be made available to any interested veteran, veterans organization, or other interested person in the state.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.072. LEASE BY BOARD. (a) The board may lease any property that it owns on terms it considers proper.

(b) A lease for agricultural and grazing purposes is subject to cancellation on the sale of the property to a veteran.

(c) The board may execute oil, gas, and mineral leases on land purchased by it before it sells the land by following the same procedure provided for the school land board in the lease of public school land.

Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.073. CONTRACTS WITH PRIVATE ENTITIES. The board may contract with a private entity to administer all or part of the program if it is cost effective to do so.

Added by Acts 1985, 69th Leg., ch. 798, Sec. 6, eff. Sept. 1, 1985.

Sec. 161.074. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for

payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The fees and expenses of the board in connection with the issuance of bonds and the purchase and sale of land may be paid from money in the fund, provided that payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on bonds constitute payments of principal of and interest on the bonds.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.03, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 1, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.354, eff. Sept. 1, 2001.

Sec. 161.075. INFORMATION FOR LENDING INSTITUTIONS. (a) In this section, "lending institution" has the meaning assigned by Section 161.502.

(b) On request, the board shall provide to a lending institution information regarding state land and housing benefits programs for veterans in this state.

Added by Acts 2003, 78th Leg., ch. 69, Sec. 3, eff. May 16, 2003.

Sec. 161.076. MEMORANDUM OF UNDERSTANDING. (a) The board shall enter into a memorandum of understanding with the commission. The memorandum of understanding must specify the guidelines, powers, and duties necessary for the board and the commission to coordinate veterans benefits outreach activities.

(b) The memorandum of understanding must address board and commission coordination with respect to the following veterans benefits outreach activities:

(1) operation by the board of a consolidated communications center;

(2) combined direct mail efforts;

(3) sharing veterans contact databases;

(4) dissemination of information through integrated websites and a joint brochure;

(5) veterans benefits seminars; and

(6) any other veterans benefits outreach activity determined by the board and the commission to be appropriate for coordination by those agencies.

(c) The memorandum of understanding must identify the joint and separate powers and duties of the board and the commission as necessary to implement coordinated veterans benefits outreach activities, including powers and duties relating to:

(1) reimbursements for coordinated activities;

(2) the management and funding of a consolidated communications center;

(3) operating expenses associated with the coordinated activities, including expenses relating to office space, printing, and postage;

(4) the development and maintenance of integrated web services regarding veterans benefits and services;

(5) the development and dissemination of a joint brochure regarding veterans benefits and services; and

(6) joint presentations at or sponsorship of veterans benefits seminars.

(d) The commission and the board shall periodically update the memorandum of understanding and continue to explore additional opportunities for coordination between the agencies regarding their respective veterans benefits outreach activities.

(e) The commission and the board shall consider the appropriate use of authorized bond proceeds and federal money to ensure that each

agency complies with applicable funding constraints in entering into the memorandum of understanding.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.077. COMMUNICATIONS CENTER. (a) Based on the memorandum of understanding described by Section 161.076, the board shall operate a consolidated communications center to provide information regarding the benefits and services available to veterans of this state, including benefits and services offered by the board and the commission.

(b) In operating the communications center, employees must be knowledgeable about the functions of the center and be able to access information regarding all available veterans benefits and services and shall:

(1) answer the veterans toll-free hotline; and

(2) disseminate to veterans, including newly discharged veterans, information regarding the benefits and services, as appropriate.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

Sec. 161.078. WEBSITE; BROCHURE. (a) Based on the memorandum of understanding described by Section 161.076, the board shall integrate web services and develop a hard-copy brochure that provides in a centralized, comprehensive, and simplified format information about all available veterans benefits and services, including benefits and services offered by the board and the commission. In integrating web services, the board shall develop a single entry point to allow public access to information related to all available veterans benefits and services.

(b) This section does not preclude the board or commission from operating additional websites or disseminating other information as determined appropriate by the board or the commission, in accordance with the memorandum of understanding provided under Section 161.076.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff.

June 15, 2007.

Sec. 161.079. BENEFITS SEMINARS. (a) To ensure that the veterans of this state receive uniform information on all veterans benefits and services available, the board and the commission shall:

(1) jointly plan and provide state-sponsored veterans benefits seminars; and

(2) coordinate the involvement of each agency in seminars hosted for veterans by other organizations.

(b) Planning and coordination under this section must ensure the consistent presentation of benefits and services information by the board or the commission at seminars described by this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 334 (H.B. 3140), Sec. 4, eff. June 15, 2007.

SUBCHAPTER D. GENERAL OBLIGATION BONDS

Sec. 161.111. ISSUANCE AND SALE OF BONDS; DISPOSITION OF PROCEEDS. By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.112. INSTALLMENTS. The board, at its option, may issue bonds in one or several installments.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.113. INTEREST RATE. The bonds shall bear the rate or rates of interest prescribed by the board.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.05, eff. Aug. 30, 1993.

Sec. 161.114. PAYMENT AND MATURITY OF BONDS. (a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from their date.

(b) Bonds previously issued shall mature according to their provisions.

(c) The board shall determine the medium of payment for both principal of and interest on the bonds.

(d) The board at its own option may make the bonds redeemable or subject to tender for purchase before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.06, eff. Aug. 30, 1993.

Sec. 161.115. FORM, DENOMINATION, AND PLACE OF PAYMENT OF BONDS. The board shall determine the form of the bonds, including the forms of interest coupons attached to the bonds, and shall fix the denomination or denominations of the bonds and the place or places for payment of the principal of and interest on the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.116. MANNER OF EXECUTION. (a) The bonds shall be executed by and on behalf of the board and the state as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed and executed as the board provides in the resolution or order authorizing the issuance of the bonds.

Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.07, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 300, Sec. 36, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 620, Sec. 1, eff. Sept. 1, 2001.

Sec. 161.117. SIGNATURES AND SEALS. (a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond, or whose facsimile signature appears on a coupon, ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.118. APPROVAL BY ATTORNEY GENERAL. Before bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general. If the record demonstrates that the bonds have been issued in accordance with the constitution and this subchapter, the bonds shall be approved by the attorney general.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.08, eff. Aug. 30, 1993.

Sec. 161.119. REGISTRATION WITH COMPTROLLER. After the bonds are approved by the attorney general, they shall be registered in the office of the comptroller.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.09, eff. Aug. 30, 1993.

Sec. 161.120. VALIDITY OF BONDS. (a) After the bonds are approved by the attorney general and registered with the state

comptroller, they shall be held as valid and binding obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or a certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) The only defense that can be offered against the validity of the bonds shall be forgery or fraud.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.121. BONDS AS NEGOTIABLE INSTRUMENTS. Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.123. NOTICE FOR BIDS ON BONDS. If the board authorizes the issuance of a series of bonds and decides to call for bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a recognized financial journal of general circulation.

Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.10, eff. Aug. 30, 1993.

Sec. 161.124. SECURITY FOR BID. The board may require bidders to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted by the board.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.11, eff. Aug.

30, 1993.

Sec. 161.125. SALE OF BONDS. Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.12, eff. Aug. 30, 1993.

Sec. 161.126. REPLACEMENT BONDS. The board may provide for replacement of bonds that are mutilated, lost, or destroyed.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.127. REFUNDING BONDS. (a) The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

(b) As far as applicable, the preceding provisions of this subchapter shall govern:

(1) the issuance of the refunding bonds;

(2) the maturities and other details of the refunding bonds;

(3) the rights of bondholders; and

(4) the duties of the board with respect to the refunding bonds.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.128. BONDS AS INVESTMENTS AND SECURITY. (a) Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties,

school districts, and other political subdivisions and public agencies of the state.

(b) The bonds are legal and sufficient security for the deposits in the amount of the par value of the bonds.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.13, eff. Aug. 30, 1993.

Sec. 161.129. TAXATION OF BONDS. Bonds are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.14, eff. Aug. 30, 1993.

Sec. 161.130. CONSTITUTIONAL APPROPRIATIONS. (a) If during the existence of the fund or during the time general obligation bonds are payable from the fund the board determines that there will not be sufficient money in the fund during the following biennium available to pay principal of or interest on the bonds that are to come due and to be paid from the fund during that biennium, the comptroller shall transfer to the fund the first money coming into the State Treasury not otherwise appropriated by the constitution in amounts sufficient to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest actually become due there is not sufficient money in the fund available to pay the amount due.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Sec. 161.131. MINORITY-OWNED BUSINESSES. (a) The board shall make a good faith effort to award to minority-owned businesses:

(1) contracts relating to the issuance of bonds by the

board under this chapter in the amount of at least 20 percent of the total costs of issuing those bonds; and

(2) contracts for the items to be financed by bonds issued by the board in the amount of at least 20 percent of the proceeds of those bonds.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(134), eff. June 17, 2011.

(c) In this section:

(1) "Minority-owned business" means a business entity at least 51 percent of which is owned by members of a minority group or, in the case of a corporation, at least 51 percent of the shares of which are owned by members of a minority group, and that is managed and controlled by members of a minority group in its daily operations.

(2) "Minority group" includes:

(A) African Americans;

(B) American Indians;

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(134), eff. June 17, 2011.

Sec. 161.132. WOMEN-OWNED BUSINESSES. (a) The board shall make a good faith effort to award to women-owned businesses:

(1) contracts relating to the issuance of bonds by the board under this chapter in the amount of at least 10 percent of the total costs of issuing those bonds; and

(2) contracts for the items to be financed by bonds issued by the board in the amount of at least 10 percent of the proceeds of those bonds.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(135), eff. June 17, 2011.

(c) In this section:

(1) "Women-owned business" means a business entity at least

51 percent of which is owned by women or, in the case of a corporation, at least 51 percent of the shares of which are owned by women, and that is managed and controlled by women in its daily operations.

(2) "Minority group" includes:

(A) African Americans;

(B) American Indians;

(C) Asian Americans; and

(D) Mexican Americans and other Americans of Hispanic origin.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.15, eff. Aug. 30, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 25(135), eff. June 17, 2011.

SUBCHAPTER E. VETERANS' LAND FUND

Sec. 161.171. MONEY AND LAND INCLUDED IN FUND. (a) The veterans' land fund shall include:

(1) land purchased by the board from money in the fund;

(2) money attributable to general obligation bonds issued and sold by the board, including proceeds from the issuance and sale of the bonds;

(3) money received from the sale or resale of land or rights in land purchased with the proceeds from the general obligation bonds;

(4) money received from the sale or resale of land or rights in land purchased with other money attributable to the general obligation bonds;

(5) proceeds derived from the sale or other disposition of the board's interest in:

(A) contracts for the sale of land or rights in land; or

(B) a loan made under Subchapter K;

(6) interest and penalties received from the sale or resale of land purchased under this chapter or from rights in the land;

(7) bonuses, income, rents, royalties, and any other pecuniary benefit received by the board from:

(A) land purchased under this chapter; or

(B) loans made under Subchapter K;

(8) money received as indemnity or forfeiture for the failure of any bidder for purchase of general obligation bonds to comply with the person's bid and accept and pay for the bonds or for the failure of a bidder for purchase of land comprising a part of the fund to comply with the person's bid and accept and pay for the land and amounts received by the board under bond enhancement agreements with respect to the bonds;

(9) interest received from investments of this money;

(10) any interest of the board in a loan made under Subchapter K using money in the fund, including any title insurance related to the loan or land purchased with the loan; and

(11) any equitable interest in property encumbered under Subchapter K and attributable to the fund.

(b) Except as otherwise provided by law, money in the fund shall be deposited in the State Treasury to the credit of the fund.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.17, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 71, Sec. 1, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 333, Sec. 1, eff. May 21, 2001.

Sec. 161.173. INVESTMENT OF MONEY IN FUND. (a) Money in the fund that is not immediately committed to paying principal of and interest on the bonds, to the purchase of land, or to the payment of expenses as provided in this chapter may be invested in:

(1) direct security repurchase agreements and reverse security repurchase agreements made with state or national banks that have main offices or branch offices in this state or with primary dealers as approved by the Federal Reserve System;

(2) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(3) direct obligations of or obligations guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor organization to one of those organizations;

(4) bankers' acceptances that:

(A) are eligible for purchase by members of the Federal Reserve System;

(B) do not exceed 270 days to maturity; and

(C) are issued by a bank that has received the highest short-term credit rating by a nationally recognized investment rating firm;

(5) commercial paper that:

(A) does not exceed 270 days to maturity; and

(B) has received the highest short-term credit rating by a nationally recognized investment rating firm;

(6) contracts written by the board in which the board grants the purchaser the right to purchase securities in the board's marketable securities portfolio at a specified price over a specified period and for which the board is paid a fee and specifically prohibits naked-option or uncovered option trading;

(7) obligations of a state or an agency, county, city, or other political subdivision of a state, including revenue bonds issued under Chapter 164, and mutual funds composed of these obligations;

(8) an investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States;

(9) an investment, account, depository receipt, or deposit that is fully:

(A) insured by the Federal Deposit Insurance Corporation or its successor; or

(B) secured by securities described by Subdivision (2), (3), or (8) of this subsection;

(10) a collateralized mortgage obligation fully secured by securities or mortgages issued or guaranteed by the Government National Mortgage Association (GNMA) or any entity described by Subdivision (3) of this subsection;

(11) a security or evidence of indebtedness issued by the Farm Credit System Financial Assistance Corporation, the Private Export Funding Corporation, or the Export-Import Bank; and

(12) any other investment authorized for investment of state funds by the comptroller under Section 404.024, Government Code.

(b) In this section:

(1) "Direct security repurchase agreement" means an

agreement under which the board buys, holds for a specified time, and then sells back any of the following securities, obligations, or participation certificates:

(A) United States government securities;

(B) direct obligations of or obligations the principal and interest of which are guaranteed by the United States;

(C) direct obligations of or obligations guaranteed by the Federal Home Loan Banks, the Federal National Mortgage Association, the Federal Farm Credit System, the Student Loan Marketing Association, the Federal Home Loan Mortgage Corporation, or a successor organization to one of those organizations; or

(D) any other investment instrument, obligation, or other evidence of indebtedness the payment of which is directly or indirectly guaranteed by the full faith and credit of the United States.

(2) "Market value" means the fair and reasonable prevailing price at which a security is being sold on the open market at the time of the appraisement of the security by the board.

(3) "Reverse security repurchase agreement" means an agreement under which the board sells and after a specified time buys back any of the securities, obligations, or participation certificates listed in Paragraphs (A) through (D) of Subdivision (1) of this subsection.

(c) The Veterans Land Board shall not invest more than $50 million in revenue bonds issued under Chapter 164.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 2, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 56, Sec. 1, 2; Acts 1993, 73rd Leg., ch. 242, Sec. 1.18, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 265, Sec. 2, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 1423, Sec. 14.17, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch; 262, Sec. 1, 2, eff. May 28, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 5.013, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1083 (S.B. 1179), Sec. 23, eff. June 17, 2011.

Sec. 161.1731. CUSTODY AND INVESTMENT OF ASSETS PENDING

TRANSACTIONS. With the approval of the comptroller, the board, in managing the assets of the fund, pending the completion of an investment transaction, may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the cash or securities of the fund; and

(2) authorize the custodian to invest cash held under Subdivision (1) in the investments determined by the board.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 2, eff. May 9, 1997.

Sec. 161.1732. LENDING SECURITIES. (a) In managing the assets of the fund, the board may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the securities of the fund; and

(2) authorize the custodian to lend the securities held under Subdivision (1) as provided by this section and by rules adopted by the board.

(b) To be eligible to lend securities under this section, a custodian selected by the board under Subsection (a) must be experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver to, and maintain with, the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned securities.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 2, eff. May 9, 1997.
Amended by Acts 1999, 76th Leg., ch. 134, Sec. 2, eff. May 20, 1999.

Sec. 161.174. USE OF FUND TO PAY PRINCIPAL AND INTEREST. The principal of and interest on bonds issued by the board shall be paid from money in the fund as provided by the constitutional provision authorizing the bonds.

Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.19, eff. Aug. 30, 1993.

Sec. 161.175. USE OF FUND TO PAY EXPENSES RELATED TO THE LAND. (a) The board may use money in the fund attributable to bonds that have been issued and sold to pay:

(1) expenses of surveying and monumenting the land and the tracts of land;

(2) the cost of constructing roads on the land or the tracts of land;

(3) legal fees, recordation fees, and advertising costs arising from the purchase and sale or resale of the land and the tracts of land; and

(4) other similar costs necessary or incidental to the purchase and sale of land acquired by the board.

(b) These expenses shall be added to the price of the land when sold or resold by the board.

(c) The board may award a contract in an amount not to exceed $25,000 to purchase supplies, materials, services, and equipment for use by the board in connection with improvements to, repairs to, or maintenance of land and with roadways and improvements located on land that are undertaken by the board under this chapter to make the land more marketable or useable without the necessity of soliciting or obtaining competitive bids. The board may not award a contract under this subsection in an amount that exceeds $25,000 without soliciting or obtaining competitive bids.

Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.20, eff. Aug. 30, 1993; Acts 2003, 78th Leg., ch. 25, Sec. 1, eff. May 12, 2003.

Sec. 161.176. USE OF FUND TO PAY BOND EXPENSES. The board may use money in the fund attributable to bonds issued and sold to pay:

(1) legal fees and fees for financial advice necessary in the opinion of the board to the sale of bonds;

(2) the expense of publishing notice of sale of an installment of bonds;

(3) the expense of printing the bonds;

(4) the expenses of issuance of the bonds, including the actual costs of travel, lodging, and meals of board members, officers or employees of the board, the comptroller, and the attorney general that are necessary in the opinion of the board to effectuate the issuance, rating, and delivery of the bonds;

(5) the cost of manually signing the bonds;

(6) remuneration to any agent employed by the board to pay the principal of and interest on the bonds;

(7) any amounts required to be paid to maintain the federal tax exemption of interest on the bonds; and

(8) all other costs, fees, and expenses relating to the issuance of the bonds.

Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 3, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 1.21, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 14.18, eff. Sept. 1, 1997.

Sec. 161.177. PURCHASE AND DESTRUCTION OF BONDS. (a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold, and the debt represented by these bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the comptroller, who shall certify this fact to the board under the seal of his office.

(c) No further interest shall be paid on these bonds.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.19, eff. Sept. 1, 1997.

Sec. 161.178. DISPOSAL OF EXCESS FUNDS. Subject to the provisions of the constitution:

(a) Money in the fund that is not spent for the purposes provided in this chapter shall remain in the fund until there is sufficient money to retire fully bonds issued and sold by the board.

(b) Money in the fund that is in addition to that necessary to retire the bonds shall be deposited to the credit of the General Revenue Fund to be appropriated as provided by law, and the money necessary to retire the bonds shall be set aside and shall remain in the fund.

(c) Money that becomes at a later time a part of the fund after there is sufficient money to retire the bonds shall be deposited to the credit of the General Revenue Fund.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 17, eff. Sept. 1, 1985.

Sec. 161.179. SALE OF LAND AND LAND CONTRACTS. Notwithstanding any other provision of this chapter, the board may sell at public or private sale, with or without public bidding, any or all of the land contracts and related land. Proceeds from the sale shall be deposited in the fund or account from which the contracts or related land were sold and otherwise applied in the manner set forth in this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, in whole or in part, outstanding bonds issued by the board.

Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 18, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 242, Sec. 1.22, eff. Aug. 30, 1993.

Sec. 161.180. TEMPORARY TRANSFERS. Amounts temporarily transferred from the fund to the veterans' housing assistance fund or the veterans' housing assistance fund II under the Texas Constitution shall be returned to the fund as soon as practicable. Investment earnings allocated by the board to the transferred amounts shall be

credited to the fund as if the transfer had not been made.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 1.23.

SUBCHAPTER F. PURCHASE, SALE, AND OTHER DISPOSITION OF LAND

Sec. 161.2111. REPORT TO BOND REVIEW BOARD. When the Veterans' Land Board applies under Subchapter C, Chapter 1231, Government Code, for the Bond Review Board's approval of a bond issuance, or on request of the Bond Review Board, with respect to purchases made under this chapter, the Veterans' Land Board shall file with the Bond Review Board a report on the performance of loans made by the Veterans' Land Board in connection with the purchases. The Bond Review Board shall review the reports filed by the Veterans' Land Board under this section to assess the performance of loans made under this chapter. The filing dates and the contents of the reports must comply with any rules adopted by the Bond Review Board.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.02, eff. Aug. 22, 1991. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.355, eff. Sept. 1, 2001.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 87, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.42, eff. September 1, 2019.

Sec. 161.212. APPRAISAL. (a) Before purchasing land under the provisions of this chapter, the board shall have an appraisal of the property made to determine its value.

(b) A person making an appraisal on behalf of the board shall be licensed or certified as an appraiser by the State of Texas.

(c) The appraiser shall make a written report to the board in the form and manner required by the board.

(d) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 7, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 1, 21, eff. Sept. 1,

2003.

Sec. 161.213. SWORN REPORT. (a) Before the board purchases land under Section 161.211 of this code or Subchapter G of this chapter, it shall require the seller to execute a sworn report to the board that shall include the following:

(1) the date the seller purchased the land;

(2) the amount the seller paid for the land if purchased subsequent to June 7, 1949;

(3) from whom the seller purchased the land; and

(4) the improvements made on the land since the seller purchased it and the cost of the improvements.

(b) If the land is purchased under Subchapter G of this chapter, the sworn report shall include the following additional information:

(1) if the seller by any manner or method is making the down payment to the board on behalf of the veteran;

(2) if there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid; and

(3) if there is an agreement or contract of any nature between the seller and the veteran to transfer, sell, or convey at any time in the future.

Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.214. TITLE. (a) Before making payment for land, the board shall have the title of the property sought to be purchased examined and may require for this purpose a title insurance policy or appropriate examination of title. The board may submit the title to the attorney general for examination and opinion.

(b) The board may purchase land that has mineral interests outstanding or that is subject to title exceptions acceptable to the board.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 2, eff. Sept. 1, 2003.

Sec. 161.215. PURCHASE OF LAND. Land purchased by the board shall be acquired at the lowest price that can be obtained in the opinion of the board, taking into consideration the quality, location, natural advantages, and improvements of the land. The land shall be paid for in cash and shall be clear of all liens and shall be a part of the fund.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.216. COST OF LAND SOLD BY BOARD. Except for forfeited land that may be resold by the board at less than actual cost under Section 161.319 of this code, land shall not be sold by the board at less than its actual cost.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.24, eff. Aug. 30, 1993.

Sec. 161.217. APPOINTMENT OF LOCAL COMMITTEE. The commissioners court of each county in the state shall appoint a committee composed of three resident real property owners of the county.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.218. WORK OF LOCAL COMMITTEE. (a) A person who considers himself an eligible veteran under this chapter and who desires to benefit under this chapter shall submit to the local committee the forms prescribed by the board before he submits his application of purchase and sales contract to the board. If the veteran is a resident of one county and is seeking to purchase land located in another, he shall submit the forms to the local committee in both counties.

(b) The local committee shall consider the forms and shall

submit to the board a report concerning the financial responsibility of the veteran, if it is known, a statement of opinion as to whether or not the transaction is bona fide, a statement as to the amount the committee considers to be the reasonable value of the land in question, and a statement of the credit rating of the veteran applicant.

(c) Notwithstanding Subsection (a) or (b) of this section, or Section 161.217 of this subchapter, the committees of the various counties shall function as provided by the board's rules and may be abolished by the board if it is determined that they are no longer necessary.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 8, eff. Sept. 1, 1985.

Sec. 161.219. BOARD INVESTIGATION. (a) The board may make inquiries and investigations it considers proper to determine the veteran's eligibility and qualifications and shall obtain from the veteran a written credit report.

(b) If the board determines from the information submitted or from its own inquiries and investigations that the financial responsibility of the veteran leaves reasonable doubt as to his ability to carry the contract through to completion and make all payments, the board shall reject the application.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 9, eff. Sept. 1, 1985.

Sec. 161.220. EXEMPTION. The provisions of Sections 161.217 through 161.219 of this code do not apply to sales under Sections 161.175, 161.231 through 161.234, and 161.319 of this code unless the board so desires.

Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.221. INITIATION OF SALE. The sale of land by the board may be properly initiated by contract of sale and purchase, and the contract shall be recorded in the deed records in the county in which the land is located.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.222. PURCHASE PAYMENTS. (a) The purchaser shall make an initial payment in an amount set by the board's rules for land sold under this chapter.

(b) The balance of the selling price shall be amortized over a period determined by the board not to exceed 40 years together with interest at a fixed, variable, floating, or other rate or rates determined by the board.

(c) The purchaser is entitled to pay any or all installments still remaining unpaid on any installment date.

(d) In an individual case, the board may postpone for good cause the payment of the whole or any part of an installment of the selling price or interest on the selling price on terms the board considers proper.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1898, ch. 768, Sec. 1, eff. June 13, 1979; Acts 1985, 69th Leg., ch. 798, Sec. 10, 20, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 242, Sec. 1.25, eff. Aug. 30, 1993.

Sec. 161.223. BOARD TO SPECIFY TERMS. The board may specify in each individual case the terms of the contract entered into with the purchaser as long as they are not contrary to the provisions of this chapter.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.224. TIME LIMIT ON TRANSFER. (a) No property sold under this chapter may be transferred, sold, or conveyed in whole or

part until the original veteran purchaser has enjoyed possession for a period of three years from the date of purchase of the property and complied with the terms and conditions of this chapter and rules of the board.

(b) If the veteran purchaser dies or becomes financially incapacitated or if there is an involuntary transfer by court order or proceedings including bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of the three-year period by the purchaser or his heirs, administrators, or executors by complying with rules of the board and by securing the approval of the board.

(c) After the three-year period, a purchaser may transfer, sell, or convey land purchased under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.225. SALE TO A NONVETERAN. If the sale is made to a person other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the board determined by the board at an amount not less than one percent a year greater than the rate determined by the board for sale to veterans under Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter on the date on which the transfer, sale, or conveyance is approved. If the purchase contract is awarded in a divorce action or incident to a written separation agreement, the interest rate shall not change.

Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.226. DISPOSITION OF LAND THAT IS PAID FOR. Property sold under this chapter may be transferred, sold, or conveyed at any time after the entire indebtedness due to the board has been paid.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 161.227. LEASE OF LAND. (a) No land purchased under this chapter may be leased by the purchaser for a term of more than 10 years except as follows:

(1) leases for oil, gas, and other minerals may be for a term of not more than 10 years, and as long thereafter as such oil, gas, and other minerals are produced from the land in commercial quantities;

(2) leases for coal and lignite may be for a term of not more than 40 years, and as long thereafter as such coal and lignite are produced from the land in commercial quantities; and

(3) leases, whether referred to as leases, licenses, or easements, for microwave, radio, or other communication towers, may be for a term of not more than 50 years.

(b) No lease may contain a provision for option or renewal of the lease or re-lease of the property for any term which would cause the entire fixed term of such lease or leases to exceed the applicable maximum fixed term set forth in Subsection (a)(1), (2), or (3) above, and the taking of any such option, renewal, or re-lease agreement in a separate instrument to take effect in the future is prohibited. A lease or instrument that contains an option, renewal, or re-lease agreement in violation of this section is expressly declared to be void.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 3080, ch. 812, Sec. 1, eff. June 17, 1981; Acts 2003, 78th Leg., ch. 674, Sec. 3, eff. Sept. 1, 2003.

Sec. 161.228. CONDITIONS OF LEASES. While the veteran is indebted to the board for land purchased, if he executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, or hard metals or a lease or contract of sale for timber, sand, gravel, or other materials that covers all or part of the land and that would result in the depletion of the corpus of the tract, at least one-half of all bonus money, delay rentals, and royalties received as consideration for or payment under the oil, gas, and

mineral lease and at least one-half of all money received under a lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials or as much as is required, shall be paid to the board by the owner of the lease or contract of sale and applied by the board to the satisfaction of the indebtedness.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 3080, ch. 812, Sec. 2, eff. June 17, 1981.

Sec. 161.229. DEEDS. (a) When the entire indebtedness due the state under the contract of sale is paid, the chairman of the board shall execute a deed under seal to the original purchaser of the land or to the last assignee whose assignment has been approved by the board.

(b) None of the provisions of this chapter shall be construed to prohibit the board from accepting full payment for a portion of a tract and issuing a deed to the land according to the rules of the board.

(c) Deeds issued by the board and executed by the chairman under seal are ratified, confirmed, and validated whether they convey all or only a part of the land contracted to be sold to the veteran.

(d) If a deed is executed to a person other than the legal owner or to a deceased grantee, the deed and the rights conveyed still inure to the benefit of the legal owner.

Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.230. DEATH OF PURCHASER. (a) If the purchaser of the land dies while indebted to the board under a contract, his rights, acquired under this chapter and the contract devolve on his heirs, devisees, or personal representatives under the laws of this state, but subject to all rights, claims, and charges of the board.

(b) Default by an heir, devisee, or personal representative with respect to a right, claim, or charge of the board has the same effect as default by the purchaser before his death.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.231. SUBDIVIDING LAND. Land acquired by the board may be subdivided for sale into tracts of the size the board may consider advisable.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.232. CONDITIONS FOR SALE OF LAND. Land acquired and subdivided under Sections 161.175, 161.231, 161.233, and 161.234 of this code shall be offered for sale according to rules adopted by the board and shall be sold by the board to veterans qualified to participate in the program in conformity with the provisions of this chapter relating to the sale of land purchased generally by the board.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.233. DOWN PAYMENT. (a) The sale price of land sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code may include the addition of the expenses and fees in Sections 161.069, 161.070, and 161.175 of this code. Provided, however, no tract may be sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code at a price exceeding $40,000 unless the veteran pays the board in cash, in accordance with its rules, a down payment equal to that portion of the sale price in excess of $40,000. This down payment shall be in addition to the initial payment required by Section 161.222 of this code and shall be paid not later than the sale date.

(b) If the sale is not consummated, the down payment shall be refunded to the veteran.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, Sec. 2, eff. June 13, 1979; Acts 1985, 69th Leg., ch. 798, Sec. 11, eff.

Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 160, Sec. 1, eff. Aug. 26, 1991.

Sec. 161.234. SALE TO OTHER PURCHASERS. The provisions of Sections 161.175 and 161.231 through 161.233 of this code notwithstanding, land acquired and subdivided under these sections that has first been offered for sale to veterans and that has not been sold to the purchasers may be sold to any purchaser in the same manner as land forfeited under this chapter.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.235. RIGHTS OF SURVIVING SPOUSE. If an eligible Texas veteran dies after he has filed with the board an application and contract of sale to purchase through the board the tract selected by him or her and before the purchase is completed, the surviving spouse of the veteran may complete the transaction.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.236. NUMBER OF TRACTS PURCHASED. The board may promulgate rules to determine the number of tracts of land that a veteran may purchase under this chapter.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 133, Sec. 1, eff. May 20, 1999.

Sec. 161.237. EXEMPTION FROM CERTAIN REAL ESTATE TRANSACTION LAWS. (a) Unless the statute specifically states that the statute applies to the board, the following statutes do not apply to the board:

(1) a statute that would require the board to provide a notice or disclosure to a buyer of real property; and

(2) a statute relating to the sale, purchase, or financing

of real property by an executory contract, including a contract for deed or other similar sale.

(b) This section does not affect the application of a statute described by Subsection (a)(2) to a party involved in a transaction with the board.

Added by Acts 2007, 80th Leg., R.S., Ch. 234 (H.B. 1853), Sec. 3, eff. May 25, 2007.

SUBCHAPTER G. PURCHASE AND SALE OF SELECTED LAND

Sec. 161.281. SELECTION OF LAND. (a) If a veteran desires a particular tract of land located in this state, on proper showing of eligibility to benefits under this chapter, he may be authorized by the board to select the land that he desires and submit his selection to the board on its prescribed form.

(b) The board shall establish a procedure that requires the veteran to personally inspect the tract he has selected. The board may by rule waive the inspection requirement. If the board grants the veteran's request for a waiver, the veteran must designate in writing a personal representative who will inspect the tract for him. The veteran's representative shall submit to the board an affidavit stating that he has inspected the tract the veteran selected.

(c) In order to respond to market conditions, the board may from time to time by rule set the minimum acreage that a veteran may purchase. However, the board may not set the minimum acreage at less than one acre.

Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 12, eff. Sept. 1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 4, eff. Sept. 1, 2003.

Sec. 161.282. PROCESSING APPLICATIONS. As far as practical, applications shall be processed in the order in which they are received by the board.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.283. PURCHASE BY BOARD. (a) If the board is satisfied with the value and desirability of the property selected by the veteran, it may purchase the land from its owner on the agreed terms.

(b) The board shall pay not more than $60,000 for the property, but may pay more if the veteran pays to the board or the board's designee in cash, in accordance with its rules, that portion of the purchase price in excess of the amount that the board agrees to pay. The amount shall be paid not later than the date on which the board acquires title to the property.

(c) A cash payment by the veteran is considered a down payment on the price of the land when sold to the veteran by the board and is in addition to the initial payment required by Section 161.222 of this code.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 1899, ch. 768, Sec. 3, eff. June 13, 1979; Acts 1991, 72nd Leg., ch. 160, Sec. 2, eff. Aug. 26, 1991; Acts 2003, 78th Leg., ch. 674, Sec. 5, eff. Sept. 1, 2003.

Sec. 161.284. APPRAISAL AND TITLE. The board shall have an appraisal of the property made as it considers necessary to determine the value and, before consummating the purchase, shall satisfy itself regarding the title as provided in Section 161.214 of this code. The board may by rule require an on-site meeting between the appraiser and the veteran.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 13, eff. Sept. 1, 1985.

Sec. 161.285. SEPARATE TRANSACTIONS. (a) No transaction under this chapter may be considered together with any other transaction to constitute a block deal between the state and two or more veteran purchasers, and each tract of land is considered as a wholly separate entity without dependence on any other tract of land, substance, matter, person, or thing in determining its value, purchase, or sale under this chapter.

(b) None of the provisions of this chapter may be construed to

prevent the purchase or sale or both of contiguous tracts of land to separate purchasers as long as the value of the land is determined in the manner provided in Section 161.284 of this code.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.286. PURCHASE PREFERENCE. (a) The property acquired by the board becomes a part of the fund, but the veteran who has selected the land has a preference right to purchase the land from the board.

(b) To be entitled to the preference right, the veteran shall agree in writing before the board purchases the land to purchase the land from the board for the price paid for it.

(c) If the veteran fails or refuses to exercise the preference right, the land may be sold by the board in the same manner provided for the sale of land forfeited under this chapter.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.287. RULES GOVERNING SALE. The rules governing the sale of land under this subchapter are governed by the provisions of this chapter relating to sale of land generally by the board except where those provisions conflict with this subchapter.

Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.288. REFUND. If the title to the land is not approved and accepted by the board, any amount paid to the board or the board's designee in excess of the amount that the board agreed to pay for the selected land shall be refunded to the veteran together with any other down payment remitted to the board.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 6, eff. Sept. 1, 2003.

SUBCHAPTER H. FORFEITURE

Sec. 161.311. BOARD JUDGE OF FORFEITURE. The board is the sole judge of forfeiture of any purchase contract under this chapter and any person availing himself of the provisions of this chapter by so doing agrees to abide by this chapter.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.312. FORFEITURE BY BOARD. (a) If a portion of the principal of or interest on any sale is not paid when due, or if the provisions of this chapter, the contract, or the rules of the board are not complied with, the contract of sale and purchase is subject to forfeiture by action of the board on 30 days written notice to the original purchaser and his vendee.

(b) The notice shall state the reason why the contract of sale and purchase is subject to forfeiture and is sufficient if given by certified mail to the last known address of the original purchaser and his vendees.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 3, eff. May 20, 1999.

Sec. 161.313. CORRECTION OF REASON FOR FORFEITURE. If the person corrects or cures the reason for forfeiture within the 30-day notice period, the board shall not enter an order of forfeiture.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.314. TIME OF FORFEITURE. The forfeiture is effective at the time the board meets and adopts a resolution directing its chairman to endorse on the wrapper that contains the papers of the sale or on the purchase contract filed in the land office the word "forfeited" or words of similar import and the date of the action and

to officially sign the document. At that time, the land and all payments previously made are forfeited.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.315. NOTICE TO COUNTY CLERK. Notice of the board's action in forfeiting the original contract shall be mailed to the county clerk of the county in which the land is located and the clerk shall:

(1) enter a notation of the forfeiture on the margin of the page or pages containing the record of the original contract; or

(2) record the notice of forfeiture.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 7, eff. Sept. 1, 2003.

Sec. 161.316. EFFECT OF FORFEITURE ON LEASES. On forfeiture, the full title to the land, including both surface and mineral estates, shall revest in the board, and the board shall recognize and continue in force and effect any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.317. REINSTATEMENT OF PURCHASE. (a) If a sale is forfeited and the title to the land revested in the fund, the original purchaser or the original purchaser's vendee is entitled to reinstate the purchase contract at any time before the date on which the board meets and orders the land to be advertised for resale or for lease for mineral development but not after that time. If a contract is forfeited more than two times, the board may require, as a condition of reinstatement, that the purchaser or the purchaser's vendee pay the account in full.

(b) A person who exercises a right of reinstatement shall:

(1) pay all delinquent installments, penalties, and costs incident to the reinstatement; and

(2) fulfill any other requirements prescribed by the board.

Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 8, eff. Sept. 1, 2003.

Sec. 161.318. RESALE OF LAND. Land included in a forfeited contract is subject to resale under Section 161.319 of this code.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.319. RESALE OF FORFEITED LAND. (a) Resale of forfeited land under this chapter may be made to the highest bidder under terms and conditions and at the time and in the manner prescribed by the board in its rules, the provisions of this chapter notwithstanding.

(b) The board may reject any and all bids.

(c) If the successful bidder refuses to execute a contract of sale and purchase, the money submitted with the person's bid is forfeited and shall be deposited in the State Treasury and credited to the fund.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 1.26, eff. Aug. 30, 1993.

Sec. 161.320. LATE PAYMENTS; DEFAULT INTEREST RATE. (a) The board may impose charges for late payments.

(b) In addition to charging for late payments under Subsection (a), the board may set and impose a default rate of interest on:

(1) the past due amounts; or

(2) the entire unpaid balance.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 14, eff. Sept.

1, 1985; Acts 2003, 78th Leg., ch. 674, Sec. 9, eff. Sept. 1, 2003.

Sec. 161.321. VACATING PREMISES. If the board declares a forfeiture under a purchase contract, the purchaser shall vacate the premises within 45 days after the date of the letter giving notice of the declaration. The letter shall be sent by registered mail to the last known address of the purchaser.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.322. ENFORCEMENT OF FORFEITURE AND PROTECTION OF RIGHTS. The board, by and through the attorney general, shall institute legal proceedings that are necessary to enforce the forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties that may be due to the board at the time the forfeiture occurred or to protect any other right to the land.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 161.323. LIABILITY. The liability of the original veteran purchaser and any subsequent assignee or assignees of the veteran are joint and several, but the original veteran purchaser is primarily liable for payment of the money under the original contract of sale and purchase. The board may release an assignor from liability under this section if at least three years have passed since the approved assignment.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 10, eff. Sept. 1, 2003.

Sec. 161.324. DEFENSES IN LAWSUITS. After obtaining the permission of the legislature, in any action brought in the courts against the state involving the title to a tract of land to which the

state has a warranty deed, the state is entitled to plead all statutes of limitations in the general laws of this state, but this shall not be considered as a limitation to any other defense the state may have.

Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. INSURANCE

Sec. 161.361. DEFINITION. In this subchapter, "person purchasing land under the program" means a person or a person's successor or assign who buys land from the board under a contract of sale and purchase regardless of whether the land is sold under Sections 161.175 and 161.231 through 161.234 or Section 161.319 or Subchapter G, or who buys land using a mortgage loan under Subchapter K.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 11, eff. Sept. 1, 2003.

Sec. 161.362. INSURANCE REQUIREMENT. (a) Persons purchasing land under the program shall carry insurance on the improvements on the property in an amount that the board considers necessary. Failure to do so will subject the contract to forfeiture or the mortgage to foreclosure.

(b) The board may promulgate rules necessary to enforce this subchapter.

(c) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.20, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 674, Sec. 12, 21, eff. Sept. 1, 2003.

Sec. 161.363. INSURANCE CONTRACT. The board may enter into a contract or agreement with one or more insurance companies authorized

to do business in this state to provide life, disability, or other insurance coverage to persons purchasing land under the program, if it is in the best interest of the program.

Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 13, eff. Sept. 1, 2003.

Sec. 161.366. INSURANCE NOT MANDATORY. It is not mandatory that a person purchasing land under the program accept the offer of the insurance coverage, and refusal by the person to accept the offer of the coverage shall not be a ground for the board to decline to enter into a contract of sale and purchase or a mortgage with the person.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 14, eff. Sept. 1, 2003.

Sec. 161.368. COLLECTION OF PREMIUM. The board may collect or provide for collection of the insurance premium in a reasonable manner.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 15, eff. Sept. 1, 2003.

Sec. 161.370. CANCELLATION BY INSURER. The contract or agreement shall not prohibit cancellation by the insurer of the entire contract on reasonable notice to the board but shall prohibit cancellation of individual coverage except as provided in this subchapter.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 16, eff. Sept. 1, 2003.

Sec. 161.371. TERMINATION OF INDIVIDUAL COVERAGE. (a) Individual insurance coverage may be terminated for any person on terms agreed to by the insurer and the board.

(b) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

(c) Repealed by Acts 2003, 78th Leg., ch. 674, Sec. 21, eff. Sept. 1, 2003.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 17, 18, 21, eff. Sept. 1, 2003.

SUBCHAPTER J. PENALTIES

Sec. 161.401. PENALTY FOR CERTAIN TRANSACTIONS. Any person, seller, veteran, or appraiser who knowingly makes, utters, publishes, passes, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing in connection with or pertaining to any transaction under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years, or by a fine of not less than $1,000 nor more than $10,000, or by both.

Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:

Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.139, eff. September 1, 2009.

Sec. 161.402. PENALTY RELATING TO CERTAIN PURCHASES, SALES, AND RESALES OF LAND. A person who knowingly files a false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing relating to the purchase, sale, or resale of land under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or by both.

Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.140, eff. September 1, 2009.

Sec. 161.403. PENALTY FOR DEFRAUDING VETERAN AND STATE. A person who defrauds a veteran of his rights and benefits under this chapter by an act of fraud, duress, deceit, coercion, or misrepresentation or a person who uses the purposes or provisions of this chapter to defraud the state or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, is guilty of a felony, and on conviction shall be punished by imprisonment in the Texas Department of Criminal Justice for not less than two nor more than 10 years or by a fine of not less than $1,000 nor more than $10,000, or by both.

Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 25.141, eff. September 1, 2009.

SUBCHAPTER K. LAND LOANS

Sec. 161.501. PURPOSE OF SUBCHAPTER; CONSTRUCTION. The purpose of this subchapter is to authorize the board to provide loans to veterans for the purchase of land that are secured by a mortgage, deed of trust, or other lien on the land. This subchapter shall be liberally construed to effect that purpose.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.502. DEFINITIONS. In this subchapter:

(1) "Lending institution" means a bank, savings bank, savings and loan association, credit union, trust company, mortgage banker, mortgage company, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing, or a

holding company for one of those institutions.

(2) "Loan" means a veterans' land loan made or acquired by the board under this subchapter secured by a mortgage, deed of trust, or other lien on the land purchased with the proceeds of the loan.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.503. LOANS. (a) In addition to purchasing land under Subchapters F and G, the board shall make or acquire loans with money from the fund to finance land purchases by eligible persons in accordance with this subchapter and rules adopted by the board.

(b) The board may enter into contracts with lending institutions to assist in processing, originating, servicing, or administering loans under this subchapter.

(c) The board shall adopt credit, underwriting, and appraisal standards that protect the best interest of the program and limit the exposure of the fund to any losses.

(d) The board shall adopt rules as necessary to implement this subchapter.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001. Amended by Acts 2003, 78th Leg., ch. 674, Sec. 19, eff. Sept. 1, 2003.

Sec. 161.504. ELIGIBILITY FOR LOAN. (a) To qualify for a loan under this subchapter, a person must be a veteran at the time the person applies for the loan. If an eligible veteran dies after filing an application for a loan, the veteran's surviving spouse may complete the transaction.

(b) The board by rule may determine the number of loans that a person may receive under this subchapter.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.505. SECURITY FOR LOAN. A disbursement of money on a loan may not be made unless the loan is secured by a mortgage, deed of trust, or other lien on the land purchased with the proceeds of the loan. A mortgage, deed of trust, or other lien may be a

participation in a lien securing any other loan for the purchase of the property, including a lien securing a home loan under Chapter 162.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.506. INITIAL PAYMENT OR EQUITY. The board may require an initial payment on a loan or may require an investment in the land by the loan recipient in an amount set by the board by rule.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.507. LOAN PAYMENTS. (a) The final principal payment on a loan shall be made not later than the 40th anniversary of the date of the loan.

(b) The board shall determine the maximum principal amount of loans to the same eligible person that may be outstanding at any time.

(c) Payments on the loan must be made at times determined by the board.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.508. FEES; INTEREST. (a) All fees to be charged to a person who receives a loan must be approved by the board.

(b) Any fees or expenses incurred in connection with a loan, including the cost of insurance, may be charged to the loan recipient and included in the principal amount of the loan.

(c) A loan must bear a fixed, variable, floating, or other rate or rates of interest determined by the board. The board may set the interest rate or rates to provide a margin over the rate paid by the board on bonds issued by the board under this chapter.

(d) The difference between the cost of the money to the board and the interest rate or rates charged to a loan recipient may be used in whole or in part to defray the expense of administering the program.

(e) To ensure the maximum benefit of the program to the loan recipient, the board shall adopt rules:

(1) relating to the fees, charges, and interest rates that may be charged by a lending institution in connection with financing the purchase of land with money that does not come from the fund; and

(2) limiting to the maximum extent practical the fees, charges, and interest rates to the fees, charges, and interest rates that would be collected by the lending institution in the normal course of the institution's mortgage lending business.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.509. LATE PAYMENTS; DEFAULT INTEREST RATE. (a) The board may impose charges for late payments.

(b) In addition to charging for late payments under Subsection (a), the board may set and impose a default rate of interest on:

(1) the past due amounts; or

(2) the entire unpaid balance.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.
Amended by Acts 2003, 78th Leg., ch. 674, Sec. 20, eff. Sept. 1, 2003.

Sec. 161.510. COMBINATION WITH CERTAIN HOME LOANS. The board may:

(1) permit a person to combine a loan made under this subchapter with:

(A) a housing assistance loan made under Chapter 162 if the portion of the loan made under this subchapter is funded from amounts on deposit in the fund and the portion of the loan made under Chapter 162 is not funded from amounts in the fund; or

(B) in accordance with board rules, a home mortgage loan made under Chapter 164; and

(2) prescribe the amounts of and forms for a combined loan under this section.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 2, eff. September 1, 2007.

Sec. 161.511. TIME LIMIT ON TRANSFER OF LAND. (a) Except as provided by Subsection (c), a recipient of a loan may not lease, sell, or otherwise transfer in whole or part land or any interest in land against which there is a mortgage, deed of trust, or any other lien securing the loan:

(1) before the third anniversary of the date the recipient purchases the land; and

(2) unless the recipient has complied with any other terms and conditions provided by this subchapter and the rules of the board.

(b) After the three-year period prescribed by Subsection (a), land may be sold or otherwise transferred, subject to any lien securing a loan, if:

(1) all interest, principal, and taxes that are due have been paid;

(2) the terms and conditions of this subchapter and rules of the board have been met; and

(3) the board approves the sale or other transfer.

(c) The board may waive the three-year period prescribed by Subsection (a):

(1) in a case of death, bankruptcy, financial incapacity, or divorce of the loan recipient;

(2) if a loan recipient is forced to move because of a change in employment or because the recipient's home is condemned through no fault of the recipient; or

(3) at any other time the board considers a waiver to be in the best interest of the program.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.512. INCREASE IN INTEREST RATE; ACCELERATED REPAYMENT. If a recipient of a loan does not comply with the requirements of Section 161.511(a) and the board does not waive the three-year period prescribed by that section, the board by rule may provide for:

(1) an increase in the interest rate on the loan;

(2) the acceleration of repayment of the principal of and

interest on the loan; or

(3) any other remedy the board considers appropriate.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.513. FORECLOSURE AND RESALE. The board shall adopt rules providing procedures governing foreclosure of a lien securing a loan.

Added by Acts 2001, 77th Leg., ch. 333, Sec. 2, eff. May 21, 2001.

Sec. 161.514. SALE OF LOANS. (a) The board may sell at public or private sale, with or without public bidding, any or all of the loans made under this subchapter. Proceeds from the sale shall be deposited in the fund and otherwise applied in the manner provided by this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, wholly or partly, outstanding bonds issued by the board under this chapter.

(b) A loan made under this chapter that is combined with a housing assistance loan made under Chapter 162 or a home mortgage loan made under Chapter 164 may be sold under this section or under Chapter 162 or 164, as applicable.

Added by Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 1, eff. September 1, 2007.

Sec. 161.515. CERTAIN RIGHTS, BENEFITS, CONDITIONS, AND OBLIGATIONS PROHIBITED. In making rules and administering this subchapter, the board may not impose on or grant a loan recipient or a transferee under Section 161.511 a right, benefit, condition, or obligation that, in any way, may impair:

(1) the ability of the board to sell a loan made under this subchapter; or

(2) the market value of a loan made under this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 223 (H.B. 1416), Sec. 1, eff. September 1, 2007.

CHAPTER 162. VETERANS' HOUSING ASSISTANCE PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 162.001. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Fund" means the veterans' housing assistance fund.

(3) "Home" means a dwelling within this state in which a veteran intends to reside as the veteran's principal residence.

(4) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing which has been approved for participation in the program by the board. The term includes a holding company for any of the foregoing.

(5) "Loan" means a veterans' housing assistance loan made or acquired by the board under this chapter secured by a mortgage on a veteran's home.

(6) "Program" means the Veterans' Housing Assistance Program.

(7) "Commission" means the Texas Veterans Commission.

(8) "Veteran" has the meaning assigned by Section 161.001.

(9) "Veterans' housing assistance fund" means the Veterans' Housing Assistance Fund established under Article III, Section 49-b-1, of the Texas Constitution or the Veterans' Housing Assistance Fund II established under Article III, Section 49-b-2, of the Texas Constitution. Each fund shall be separate and distinct from the other fund and the provisions of this chapter dealing with the fund shall relate to each fund separately and to the separate assets, liabilities, and administration of each fund.

(b) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

(c) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 266, Sec. 1, eff. Sept. 1, 1985; Acts 1985, 69th Leg., ch. 798, Sec. 15; Acts 1991, 72nd Leg., ch. 239, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 242, Sec. 2.01 to 2.03, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 83, Sec. 2,

eff. May 11, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 3, 5, eff. June 20, 2003.

Sec. 162.002. MONEY AND INTERESTS INCLUDED IN THE VETERANS' HOUSING ASSISTANCE FUND. (a) The veterans' housing assistance fund shall include:

(1) any interest of the board in home mortgage loans made from money in the fund to veterans pursuant to this chapter including any insurance thereon or on the homes;

(2) the proceeds derived from the sale or other disposition of the board's interest in home mortgage loans;

(3) the money attributable to any bonds issued and sold by the board to provide money for the fund which shall include but shall not be limited to the proceeds from the issuance and sale of such bonds;

(4) income, rents, and any other pecuniary benefit received by the board as a result of making these loans;

(5) sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with the person's bid and accept and pay for such bonds and amounts received by the board under bond enhancement agreements with respect to the bonds;

(6) interest received from investments of any such money; and

(7) any equitable interest in properties encumbered under this program and attributable to the fund.

(b) Except as otherwise provided by law, money in the fund shall be deposited in the State Treasury to the credit of the fund.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.04, eff. Aug. 30, 1993; Acts 1997, 75th Leg., ch. 71, Sec. 3, eff. May 9, 1997.

Sec. 162.003. ADMINISTRATION. (a) The board shall administer the veterans' housing assistance fund and the Veterans' Housing Assistance Program in accordance with this chapter.

(1) The board may contract with other agencies of the state or with private entities to administer all or part of the program.

(2) To the extent that it is cost effective, the board may contract with the commission to determine whether or not applicants qualify as veterans under the terms of this chapter.

(3) The board may set and collect fees it considers reasonable and necessary from each applicant to cover the expenses of administering the program, and these fees shall be deposited in the State Treasury and credited to a special housing program fee fund.

(b) The board shall adopt rules governing the administration of the fund and program, the making or acquiring of veterans' housing assistance loans, the criteria for approving lending institutions, the use of insurance on the loans and the homes financed under the program, as deemed appropriate by the board, as further security for the loans, the verification of occupancy of the home by the veteran as his principal residence, and the terms and conditions of any contract made with any lending institution for processing, originating, servicing, or administering the loans. In determining the terms of any contracts for the origination or servicing of loans, the board shall review the prudent lending practices prevalent in the residential mortgage lending industry and shall follow such practices to the maximum extent practical.

(c) The board shall determine the quality and type of homes to be financed under the Veterans' Housing Assistance Program.

(d) The board shall maintain a list of approved lending institutions and shall review and revise such list as necessary at least annually.

(e) When the Veterans' Land Board applies under Subchapter C, Chapter 1231, Government Code, for the Bond Review Board's approval of a bond issuance, or on request of the Bond Review Board, with respect to loans made under the program, the Veterans' Land Board shall file with the Bond Review Board a report on the performance of the loans. The Bond Review Board shall review the reports filed by the Veterans' Land Board under this subsection to assess the performance of loans made under the program. The filing dates and the contents of the reports must comply with any rules adopted by the Bond Review Board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 16, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 4, Sec. 13.03, eff. Aug. 22, 1991; Acts 2001, 77th Leg., ch. 1420, Sec. 8.356, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1312 (S.B. 59), Sec. 88, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 573 (S.B. 241), Sec. 1.43, eff. September 1, 2019.

Sec. 162.004. INVESTMENTS OF CERTAIN MONEY IN THE VETERANS' HOUSING ASSISTANCE FUND. Money in the fund that is not immediately committed to the payment of principal and interest on bonds issued by the board to provide money for the fund, the making of home mortgage loans as provided by this chapter, or the payment of expenses as provided by this chapter may be invested in investments authorized for the veterans land fund.

Added by Acts 1989, 71st Leg., ch. 720, Sec. 4, eff. June 14, 1989.

Sec. 162.0041. CUSTODY AND INVESTMENT OF ASSETS PENDING TRANSACTIONS. With the approval of the comptroller, the board, in managing the assets of the fund, pending the completion of an investment transaction, may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the cash or securities of the fund; and

(2) authorize the custodian to invest cash held under Subdivision (1) in the investments determined by the board.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 4, eff. May 9, 1997.

Sec. 162.0042. LENDING SECURITIES. (a) In managing the assets of the fund, the board may:

(1) select one or more commercial banks, depository trust companies, or other entities to serve as a custodian of the securities of the fund; and

(2) authorize the custodian to lend the securities held under Subdivision (1) as provided by this section and by rules adopted by the board.

(b) To be eligible to lend securities under this section, a custodian selected by the board under Subsection (a) must be

experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver to, and maintain with, the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned securities.

Added by Acts 1997, 75th Leg., ch. 71, Sec. 4, eff. May 9, 1997.
Amended by Acts 1999, 76th Leg., ch. 134, Sec. 4, eff. May 20, 1999.

Sec. 162.005. SALE OF LOANS. (a) Notwithstanding any other provision of this chapter, the board may sell at public or private sale, with or without public bidding, any or all of the loans in the fund. Proceeds from the sale shall be deposited in the fund and otherwise applied in the manner provided by this chapter, except that at the direction of the board the sale proceeds may be used by the board, together with other available money, to discharge, pay, or redeem, in whole or in part, outstanding bonds issued by the board under this chapter.

(b) In the resolution of the board that authorizes the sale of any or all of the loans in the fund, the board may also authorize one or more designated officers or employees of the board to act on the board's behalf in:

(1) conducting the sale of the loans; and

(2) determining:

(A) the purchaser of the loans; and

(B) the terms of the purchase agreement.

(c) A resolution that authorizes an officer or employee of the board to act on the board's behalf as provided by Subsection (b) must

establish the maximum principal amount of the loans to be sold and the minimum sales price of the loans to be sold, expressed as a percentage of the principal amount of the loans.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.05, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 620, Sec. 2, eff. Sept. 1, 2001.

Sec. 162.006. TEMPORARY TRANSFERS. Amounts temporarily transferred from either veterans' housing assistance fund to the veterans' land fund or to the other veterans' housing assistance fund under the Texas Constitution shall be returned to the fund as soon as practicable. Investment earnings allocated by the board to the transferred amounts shall be credited to the fund as if the transfer had not been made.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.06.

SUBCHAPTER B. VETERANS' HOUSING ASSISTANCE PROGRAM

Sec. 162.011. LOANS. (a) The board shall make or acquire loans with money from the veterans' housing assistance fund in accordance with this chapter and the rules adopted by the board.

(b) To qualify for a loan under this chapter, a person must be a veteran at the time the person applies for the loan. If an eligible veteran dies after filing an application, the surviving spouse may complete the transaction.

(c) The final principal payment on any loan under this chapter shall be made not later than 40 years after the date of the loan. The board shall determine the maximum principal amount of loans to any veteran that may be outstanding at any time, except that amounts allocable to a home mortgage loan may not exceed the maximum amount allowable for a similar home mortgage loan through the United States Department of Veterans Affairs or any successor agency.

(d) The board shall obtain insurance covering at least 50 percent of all losses anticipated in connection with veteran payment defaults on loans secured by first or second mortgages, based upon the advice of one or more qualified consultants to the board as to potential losses which may be reasonably expected on the loans as determined by analysis, including but not limited to actual

experience in the residential mortgage lending industry on similar types of mortgage loans, or, in the alternative, the board shall obtain insurance which shall insure repayment of at least 50 percent of the outstanding principal amount of all loans in the event of the nonpayment of the loans by the veterans.

(e) All fees to be charged to a veteran receiving a loan under this chapter must be approved by the board. The board may enter into contracts with lending institutions to assist in processing, originating, servicing, or administering loans under this chapter. Any fees and expenses incurred in connection with a loan, including the cost of insurance, may be charged to the veteran and made a part of the veteran's payments.

(f) The board may by rule determine, from time to time, the number of loans that a veteran may receive under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1985, 69th Leg., ch. 798, Sec. 21, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 160, Sec. 3, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 242, Sec. 2.07, eff. Aug. 30, 1993; Acts 1999, 76th Leg., ch. 133, Sec. 2, eff. May 20, 1999.

Sec. 162.013. INTEREST RATE. A loan under this chapter shall bear a fixed, variable, floating, or other rate or rates of interest determined by the board. The board may set the interest rate or rates to provide a margin over the rate paid by the board on its bonds issued under this chapter. The difference between the cost of the money to the board and the interest rate or rates charged to a veteran may be used in whole or in part to defray the expense of administering the program. To assure the maximum benefit of the program to the veteran, the board shall adopt rules relative to the fees, charges, and interest rates charged by the lending institutions on the financing of the home with money other than from the fund and shall limit to the maximum extent practical such fees, charges, and interest rates to those which would be collected by the lending institution in the normal course of its residential mortgage lending business.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.08, eff. Aug. 30, 1993.

Sec. 162.014. SECURITY FOR THE LOAN. No disbursement of funds on a loan shall be made unless the loan is secured by a mortgage, deed of trust, or other lien on the home. A mortgage retained by or a deed of trust to the board or any other lien may be a participation in a lien securing any other loan for the purchase of the property. Payments to retire the loan shall be made at times determined by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.015. INITIAL PAYMENT OR EQUITY. The board may require an initial payment on a loan or may require an investment in the home by the veteran in an amount or amounts set by the board's rules under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.09, eff. Aug. 30, 1993.

Sec. 162.016. TIME LIMIT ON TRANSFER. (a) A home or any interest therein, against which there is a mortgage, deed of trust, or any other lien securing a loan under this chapter may not be leased, transferred, sold, or conveyed in whole or in part until the original veteran purchaser has occupied the home as his principal residence for a period of three years from the date of the purchase of the home and complied with the terms and conditions of this chapter and the rules of the board.

(b) After the three-year period, a home may be transferred, sold, or conveyed subject to any lien securing a loan under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained.

(c) The board may waive the time limitation of Subsection (a) of this section upon the death, bankruptcy, financial incapacity, or divorce of the veteran or in the event a veteran is forced to move due to a change in employment or because his home is condemned through no fault of the veteran or at any other time it deems a waiver to be in the best interest of the program.

(d) In the event the requirements of Subsection (a) of this section fail to be met and the board does not waive the time

limitations as provided in Subsection (c) of this section, the board may provide in its rules for the escalation of the interest rate on the loan to a higher rate of interest or the acceleration of all principal and interest on the loan or such other remedy as the board may in its discretion deem appropriate.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.017. FORECLOSURE AND RESALE. The board shall adopt rules providing for the procedures and the rules for foreclosure and resale of homes financed with a loan under this chapter.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.018. INTEREST RATE ON DELINQUENT PRINCIPAL AND INTEREST. Principal and interest that become delinquent shall bear interest at a rate fixed by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.019. ENFORCEMENT OF FORFEITURE AND PROTECTION OF RIGHTS. The board may request the attorney general to take whatever action is necessary to protect the rights of the state and the veterans' housing assistance funds in any matter concerning the program, and on a request, the attorney general shall take such action.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

SUBCHAPTER C. BONDS

Sec. 162.031. ISSUANCE AND SALE OF BONDS; DISPOSITION OF PROCEEDS. (a) By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund, except that the proceeds of bonds issued under the authority of Article III, Section 49-b-1, of the Texas Constitution for the purpose of making loans to veterans shall be a part of the veterans'

housing assistance fund established by that provision, and the proceeds of bonds issued under the authority of Article III, Section 49-b-2, of the Texas Constitution for the purpose of making loans to veterans shall be a part of the veterans' housing assistance fund established by that provision.

(b) The board may use money in the fund attributable to bonds issued to provide money for the fund to pay all costs of issuance of the bonds, including costs, fees, and expenses of the sort the board is authorized to pay from the veterans' land fund in connection with the issuance of the veterans' land bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1989, 71st Leg., ch. 720, Sec. 5, eff. June 14, 1989; Acts 1993, 73rd Leg., ch. 242, Sec. 2.10.

Sec. 162.032. INSTALLMENTS. The board may issue bonds in one or several installments.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.033. INTEREST RATE. The bonds shall bear the rate of interest prescribed by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.034. PAYMENT AND MATURITY OF BONDS. (a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from the date of their issuance.

(b) The board may make the bonds redeemable or subject to tender for purchase before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.11, eff. Aug. 30, 1993.

Sec. 162.035. FORM, DENOMINATION, AND PLACE OF PAYMENT OF

BONDS. The board shall determine the terms of the bonds and the form of the bonds, including the forms of interest coupons attached to the bonds, if any, and shall fix the denomination of the bonds and the place for payment of the principal of and interest on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.036. MANNER OF EXECUTION. (a) The bonds shall be executed by and on behalf of the board and the state as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed and executed as the board provides in the resolution or order authorizing the issuance of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.12, eff. Aug. 30, 1993; Acts 1993, 73rd Leg., ch. 300, Sec. 37, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 620, Sec. 3, eff. Sept. 1, 2001.

Sec. 162.037. SIGNATURES AND SEALS. (a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes as if the officer had remained in office until the delivery of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.038. APPROVAL BY ATTORNEY GENERAL. Before the bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general. If the record

demonstrates that the bonds have been issued in accordance with the constitution and this chapter, the bonds shall be approved by the attorney general.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.039. REGISTRATION WITH COMPTROLLER. After the bonds are approved by the attorney general, they shall be registered in the office of the comptroller of public accounts.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.040. VALIDITY OF BONDS. (a) After the bonds are approved by the attorney general and registered with the comptroller of public accounts, they shall be held as valid and binding general obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) Only forgery or fraud may be offered as a challenge to the validity of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.041. BONDS AS NEGOTIABLE INSTRUMENTS. Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.042. NOTICE FOR BIDS ON BONDS. If the board authorizes the issuance of a series of bonds and decides to call for bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a recognized financial journal of general circulation.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.043. SECURITY FOR BID. The board may require bidders to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.044. SALE OF BONDS. Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.13, eff. Aug. 30, 1993.

Sec. 162.045. REPLACEMENT BONDS. The board may provide for replacement of bonds that are mutilated, lost, or destroyed.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.046. REFUNDING BONDS. The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.047. BONDS AS INVESTMENTS AND SECURITY. (a) Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(b) The bonds are legal and sufficient security for the deposits in the amount of the par value of the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.14, eff. Aug. 30, 1993.

Sec. 162.048. TAXATION OF BONDS. The bonds are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1.

Sec. 162.049. PAYMENT OF PRINCIPAL AND INTEREST. The comptroller shall pay the principal on bonds as they mature and the interest as it becomes payable. Payments shall be made at the place of payment designated on the bonds.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.21, eff. Sept. 1, 1997.

Sec. 162.050. CONSTITUTIONAL APPROPRIATIONS. (a) If, during the existence of the fund or during the time any general obligation bonds are payable from the fund, the board determines that there will not be sufficient money in the fund during the following biennium available to pay principal of or interest on the bonds or both principal and interest that are to come due and to be paid from the fund during the following biennium, the comptroller shall transfer to the fund the first money coming into the State Treasury not otherwise appropriated by the constitution in amounts sufficient to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest or both actually become due there is not sufficient money in the fund available to pay the amount due.

Added by Acts 1983, 68th Leg., p. 547, ch. 115, Sec. 1. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 2.15, eff. Aug. 30, 1993.

Sec. 162.051. PURCHASE AND DESTRUCTION OF BONDS. (a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold to provide money for the fund, and the debt represented by those bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the comptroller, who shall certify this fact to the board under the seal of office.

(c) Interest may not be paid on those bonds after their purchase by the board.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.16, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 14.22, eff. Sept. 1, 1997.

Sec. 162.052. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board determines to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements, including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The fees and expenses of the board in connection with the issuance of bonds and the making of loans may be paid from money in the related fund, provided that any payments due from the board under a bond enhancement agreement, other than fees and expenses, that relate to the payment of debt service on bonds constitute payments of principal of and interest on the bonds.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 2.17, eff. Aug. 30, 1993. Amended by Acts 1999, 76th Leg., ch. 134, Sec. 5, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 8.357, eff. Sept. 1, 2001.

CHAPTER 164. VETERANS' FINANCIAL ASSISTANCE PROGRAM

Sec. 164.001. PURPOSE AND POLICY. (a) The legislature declares that it is the policy of the state to provide financial assistance to veterans of the state in recognition of their service to this state and the United States and to honor veterans with a final resting place and with lasting memorials that commemorate their service.

(b) The legislature declares that existing mechanisms for implementing the policy stated in Subsection (a) of this section may be enhanced by adoption of this chapter and implementation of the financial assistance programs authorized by this chapter.

(c) The legislature finds that this chapter and the financial assistance programs authorized by this chapter are in furtherance of a public purpose.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 981, Sec. 1, eff. Nov. 6, 2001.

Sec. 164.002. DEFINITIONS. (a) In this chapter:

(1) "Board" means the Veterans' Land Board.

(2) "Bonds" means the revenue bonds issued by the board under this chapter.

(3) "Financial assistance" means the purchase of land, the sale of land to veterans, and the making of home mortgage loans to veterans, as provided for in this chapter.

(4) "Home" means a dwelling within this state in which a veteran intends to reside as the veteran's principal residence.

(5) "Lending institution" means a bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution that customarily provides service or aids in the financing of mortgages on single-family residential housing that has been approved for participation by the board, including a holding company for a lending institution.

(6) "Veteran" has the meaning assigned by Section 161.001.

(7) "Veterans cemetery" means a burial ground operated solely for the burial of veterans and their eligible relatives.

(8) "Veterans home" means a life care facility, retirement home, retirement village, home for the aging, or other facility that furnishes shelter, food, medical attention, nursing services, medical services, social activities, or other personal services or attention to veterans.

(b) Repealed by Acts 2003, 78th Leg., ch. 1145, Sec. 5.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 5, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 2, eff. Nov. 6, 2001; Acts 2003, 78th Leg., ch. 1145, Sec. 4, 5, eff. June 20, 2003.

Sec. 164.003. FINANCIAL ASSISTANCE PROGRAMS. The board may establish one or more programs for providing financial assistance to veterans under this chapter. A program may be limited to the purpose of purchasing land, selling land to veterans, making home mortgage loans to veterans, or providing one or more veterans homes or veterans cemeteries. To the extent a financial assistance program is for the purpose of purchasing land or selling land to veterans, the program shall be administered, to the extent consistent with this chapter and otherwise deemed practicable and desirable by the board,

in accordance with the board's Veterans' Land Program. To the extent a financial assistance program is for the purpose of making home mortgage loans to veterans, the program shall be administered, to the extent consistent with this chapter and otherwise deemed practicable and desirable by the board, in accordance with the board's Veterans' Housing Assistance Program.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 6, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 3, eff. Nov. 6, 2001.

Sec. 164.004. RULES. The board shall adopt rules providing for the administration of its financial assistance programs established under this chapter, including rules concerning:

(1) the purchasing of land and the selling of land to veterans;

(2) the making of home mortgage loans to veterans;

(3) the use of insurance on land and homes as deemed appropriate by the board, as further security for land sold or home mortgage loans made;

(4) the criteria for approving lending institutions participating in programs;

(5) the terms and conditions of a contract made with a lending institution;

(6) the construction, acquisition, ownership, operation, maintenance, enlargement, improvement, or furnishing or equipping of veterans homes or veterans cemeteries; and

(7) other matters as the board deems appropriate.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 7, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 981, Sec. 4, eff. Nov. 6, 2001.

Sec. 164.005. RIGHTS AND POWERS OF BOARD. (a) In connection with the administration of its financial assistance programs under this chapter, the board has and may exercise, to the extent not inconsistent with this chapter, all the rights and powers granted to it by Chapters 161 and 162 of this code relating to the administration of the board's Veterans' Land Program and Veterans'

Housing Assistance Program.

(b) In administering any of the board's financial assistance programs relating to veterans homes, the board, or the board in conjunction with other state or federal agencies, may acquire by purchase, gift, devise, lease, or a combination of those methods, construct, operate, enlarge, improve, furnish, or equip one or more veterans homes.

(c) The board may enter into an agreement with any person for the management or operation of all or part of a veterans home or all or part of a veterans cemetery. The board may delegate to the manager the authority to manage the veterans home or veterans cemetery and to employ and discharge employees.

(d) The board may not authorize the use of any veterans home in a manner that would entitle the United States to recover any amounts pursuant to 38 U.S.C. Section 8136, as amended, or any successor statute.

(e) On terms and conditions acceptable to it, the board may accept and administer gifts, grants, or donations for the support, acquisition, construction, operation, enlargement, improvement, furnishing, or equipping of veterans homes or veterans cemeteries and may enter into agreements with a nonprofit corporation for the solicitation, receipt, and disbursement of the gifts, grants, or donations.

(f) The board, the chairman of the Texas Veterans Commission, and two representatives of the veterans community selected by the chairman of the Texas Veterans Commission shall:

(1) establish the guidelines for determining:

(A) the location and size of veterans cemeteries; and

(B) the eligibility for burial in a veterans cemetery; and

(2) select up to seven locations across the state for veterans cemeteries.

(g) In administering any of the board's financial assistance programs relating to veterans cemeteries, the board, or the board in conjunction with other state or federal agencies, may plan and design, operate, maintain, enlarge, or improve veterans cemeteries.

(h) Of the funds available in the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II that may be used for veterans cemeteries, the board may spend not more than $7 million each fiscal year to plan and

design, operate, maintain, enlarge, or improve veterans cemeteries. The board may not use funds from the veterans' land fund, the veterans' housing assistance fund, or the veterans' housing assistance fund II to acquire land to be used for a veterans cemetery.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 8, eff. May 9, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 6, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 981, Sec. 5, eff. Nov. 6, 2001.

Sec. 164.0051. LOCATION OF VETERANS HOMES. To the extent practicable, when determining the location of new veterans homes in this state, the board shall consider:

(1) the geographic proximity to existing state veterans homes with special regard to areas not served by state veterans homes;

(2) the economic impact of the veterans home on the local community and the veterans program; and

(3) the areas with a significant veteran population, without regard to international boundaries.

Added by Acts 2001, 77th Leg., ch. 746, Sec. 1, eff. June 13, 2001.

Sec. 164.006. ISSUANCE OF BONDS. For the issuance of bonds under this chapter, the board may exercise the authority granted to the governing body of an issuer with regard to issuance of obligations under Chapter 1371, Government Code, to the extent that it is not inconsistent with this chapter.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.358, eff. Sept. 1, 2001.

Sec. 164.007. CONDITIONS FOR ISSUANCE OF BONDS. (a) Bonds may be issued in various series and issues.

(b) Bonds shall be payable as provided by the board and may mature serially or otherwise.

(c) Bonds shall be redeemable before maturity or subject to tender for purchase at the price or prices and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

(d) Bonds may bear a fixed, variable, floating, or other rate or rates of interest or may bear no interest, as determined by the board.

(e) Bonds may be sold at public or private sale at a price or prices and on terms determined by the board.

(f) Bonds issued under this chapter for a purpose other than buying back or refunding general obligation bonds issued under Article III, Section 49-b, 49-b-1, or 49-b-2, of the Texas Constitution may not in the aggregate exceed $1 billion.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 875, Sec. 1, eff. June 14, 2001.

Sec. 164.008. FORM OF BONDS. (a) The bonds may be issued in the form, denominations, and manner and under the terms, conditions, and details as provided by the board in the resolution authorizing their existence.

(b) The bonds shall be signed and executed as provided by the board's resolution or order authorizing the issuance of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.009. SECURITY FOR THE BONDS. (a) The bonds issued under this chapter shall be special obligations of the board. As security for the payment of the bonds, the board may provide for a pledge of and lien or mortgage on:

(1) the receipts of all kinds of the veterans' land fund, the veterans' housing assistance fund, and the veterans' housing assistance fund II determined by the board, on the basis of facts, circumstances, and expectations at the time of issuance of the bonds, not to be required for the payment of principal of or interest on the general obligation bonds issued by the board to augment the funds or to make payments with respect to principal or interest under a bond

enhancement agreement with respect to the general obligation bonds;

(2) the assets of the veterans' land fund, the veterans' housing assistance fund, or the veterans' housing assistance fund II determined by the board on the basis of facts, circumstances, and expectations at the time of issuance of the bonds not to be required for the purposes of the fund;

(3) the payments and repayments received by the board from the board's financial assistance provided under this chapter;

(4) other program revenues;

(5) other available revenues of the board; and

(6) one or more veterans homes.

(b) The pledge and lien or mortgage are to be provided for and determined in accordance with the resolution of the board providing for the issuance and sale of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1993, 73rd Leg., ch. 242, Sec. 3.02; Acts 1997, 75th Leg., ch. 71, Sec. 9, eff. May 9, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 7, eff. May 20, 1999; Acts 2003, 78th Leg., ch. 590, Sec. 1, eff. Sept. 13, 2003.

Sec. 164.010. BOND ENHANCEMENT AGREEMENTS. (a) The board may at any time and from time to time enter into one or more bond enhancement agreements that the board deems to be necessary or appropriate to place the obligation of the board, as represented by the bonds, in whole or in part, on the interest rate, currency, cash flow, or other basis desired by the board. Bond enhancement agreements may include, on terms and conditions approved by the board, interest rate swap agreements, currency swap agreements, forward payment conversion agreements, agreements providing for payments based on levels of or changes in interest rates or currency exchange rates, agreements to exchange cash flows or a series of payments, or agreements including options, puts, or calls, to hedge payment, currency, rate, spread, or other exposure. A bond enhancement agreement is an agreement for professional services and shall contain the terms and conditions and be for the period that the board approves. The cost to the board of the bond enhancement agreement may be paid from the proceeds of the sale of the bonds to which the bond enhancement agreement relates or from any other

source, including the revenues of the board that are available for the purpose of paying the bonds or that may otherwise be available to make those payments.

(b) The resolution of the board authorizing a bond enhancement agreement may authorize one or more designated officers or employees of the board to act on behalf of the board in entering into and delivering the bond enhancement agreement and in determining or setting the counterparty and terms of the bond enhancement agreement specified in the resolution, except that the resolution must set the maximum amount and term for the bond enhancement agreement.

(c) Unless the board elects otherwise in its approval of a bond enhancement agreement, the bond enhancement agreement is not a credit agreement for purposes of Chapter 1371, Government Code, regardless of whether the bonds relating to the bond enhancement agreement were issued in part under that law.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 10, eff. May 9, 1997; Acts 2001, 77th Leg., ch. 1420, Sec. 8.359, eff. Sept. 1, 2001.

Sec. 164.011. FUNDS. (a) In the resolution authorizing the issuance of bonds, the board may make additional covenants with respect to the bonds and the pledged revenues and may provide for the flow of funds and the establishment, maintenance, and investment of funds. The funds established may include an interest and sinking fund, a reserve fund, and other funds that will be kept and maintained by or under the direction of the board.

(b) The board may by resolution provide for the establishment, maintenance, and investment of additional funds into which the board may deposit revenues from any financial assistance program under this chapter that are not pledged to bonds, including any gifts, grants, or donations accepted by the board for the support, acquisition, construction, operation, enlargement, improvement, furnishing, or equipping of veterans homes or veterans cemeteries.

(c) Funds established by the board under this chapter are not to be part of the State Treasury and are not subject to Subchapter F, Chapter 404, Government Code. Any provision of this chapter or other law that provides for the deposit of money or another thing of value

into the funds prevails over the requirements of Subchapter F, Chapter 404, Government Code. The funds shall remain under the control of the board but, at the direction of the board, may be kept and held in escrow and in trust by the comptroller on behalf of the board and the owners of the bonds and used only as provided by this chapter.

(d) Money in a fund shall be invested in investments authorized as provided by a resolution or order of the board.

(e) Legal title to money in a fund is in the board unless or until paid from the fund as provided by this chapter or the resolution authorizing the issuance of the bonds or the establishment of the fund.

(f) The board shall select the comptroller or one or more commercial banks, depository trust companies, or other entities to serve as custodian of the cash or securities of a fund and may authorize the custodian to invest the cash in investments as determined by the board.

(g) In managing the assets of a fund, the board may permit the custodian of the fund's securities to lend the securities as provided by this section and by rules adopted by the board.

(h) To be eligible to lend securities under this section, a custodian selected under Subsection (f) must be experienced in the operation of a fully secured securities loan program and must:

(1) maintain adequate capital in the prudent judgment of the board to assure the safety of the securities;

(2) execute an indemnification agreement satisfactory in form and content to the board fully indemnifying the board against loss resulting from the custodian's operation of a securities loan program for the fund's securities; and

(3) require any securities broker or dealer to whom it lends securities of the fund to deliver and maintain with the custodian collateral in the form of cash, United States government securities, or letters of credit that are issued by banks rated as to investment quality not less than A or its equivalent by a nationally recognized investment rating firm in an amount equal to at least 100 percent of the market value, from time to time, of the loaned securities.

(i) The board shall require the custodian or custodians of a fund to administer the fund solely and strictly as provided by this chapter and the resolution authorizing the issuance of the bonds, and

the state may not take any other action relating to the fund except those specified in this chapter and the resolution authorizing the issuance of the bonds or the establishment of the fund.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 1997, 75th Leg., ch. 71, Sec. 11, eff. May 9, 1997; Acts 1997, 75th Leg., ch. 1423, Sec. 14.23, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 134, Sec. 8, eff. May 20, 1999; Acts 2001, 77th Leg., ch. 981, Sec. 6.

Sec. 164.012. RESOLUTIONS. (a) The resolution authorizing the issuance of the bonds may prohibit the further issuance of bonds or other obligations payable from the pledged revenues or may reserve the right to issue additional bonds to be secured by a pledge of and payable from the revenue on a parity with or subordinate to the lien and pledge in support of the bonds being issued.

(b) The resolution of the board authorizing the issuance of the bonds may include other provisions and covenants that the board determines necessary.

(c) In a resolution authorizing the issuance of bonds, the board may prescribe systems, methods, routines, and procedures under which the board will function.

(d) The board may adopt and have executed any other proceedings or instruments necessary or convenient in the issuance of bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.013. INVESTMENT SECURITIES. The bonds and any interest coupons are investment securities under Chapter 8, Business & Commerce Code, and may be issued registrable as to principal or as to both principal and interest or may be made redeemable before maturity at the option of the authority or may contain a mandatory redemption provision.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.014. APPROVAL OF THE ATTORNEY GENERAL. Bonds issued under this chapter are subject to review and approval by the attorney general in the same manner and with the same effect as provided by Chapter 1371, Government Code.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.360, eff. Sept. 1, 2001.

Sec. 164.015. REFUNDING BONDS. (a) The board may issue refunding bonds to refund all or part of its outstanding bonds issued under this chapter, including matured but unpaid interest.

(b) The board may refund bonds in the manner provided by general law for revenue bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.016. BONDS AS INVESTMENTS AND SECURITY. (a) The bonds are legal and authorized investments for banks, savings banks, trust companies, savings and loan companies, insurance companies, fiduciaries, trustees, guardians, the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions of the state, and other public funds of the state and its agencies.

(b) The bonds are eligible to secure deposits of public funds of the state and cities, counties, school districts, and other political subdivisions of the state. The bonds are lawful and sufficient security for deposits to the extent of their par value.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.017. TAX EXEMPT. Since the board is performing an essential governmental function in the exercise of the powers conferred on it by this chapter, the bonds issued under this chapter, and the interest and income from the bonds, including any profit made on the sale of bonds, and all fees, charges, gifts, grants, revenues,

receipts, and other money received or pledged to pay or secure the payment of bonds are free from taxation and assessments of every kind by this state and any city, county, district, authority, or other political subdivision of this state.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.018. NO PLEDGE OF STATE FAITH AND CREDIT; COVENANT WITH OWNERS OF BONDS. (a) Bonds issued under this chapter are special obligations of the board and are payable only from and secured only by the revenues and assets pledged to secure payment of the bonds under the Texas Constitution and this chapter, and the bonds are not and do not create or constitute a pledge, gift, or loan of the faith, credit, or taxing authority of the state.

(b) Each bond must include a statement that the faith or credit and the taxing authority of the state are not pledged, given, or loaned to secure payment of the principal of, or premium or interest on the bonds.

(c) The state pledges to and agrees with the owners of bonds issued under this chapter that the state will not limit or alter the rights vested in the board to fulfill the terms of agreements made with the owners of the bonds or in any way impair the rights and remedies of those owners until the bonds, together with any premium and interest, interest on any unpaid premium or installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of those owners, are fully met and discharged. The board may include this pledge and agreement of the state in an agreement with the owners of the bonds.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

Sec. 164.019. ENFORCEMENT BY MANDAMUS. A writ of mandamus and all other legal and equitable remedies are available to a party in interest to require the board and any other party to carry out agreements and to perform functions and duties under this chapter, the Texas Constitution, or the board's bond resolutions or orders.

Added by Acts 1993, 73rd Leg., ch. 242, Sec. 3.01, eff. Aug. 30, 1993.

TITLE 8. ACQUISITION OF RESOURCES
CHAPTER 183. CONSERVATION EASEMENTS
SUBCHAPTER A. CONSERVATION EASEMENTS GENERALLY

Sec. 183.001. DEFINITIONS. In this chapter:

(1) "Conservation easement" means a nonpossessory interest of a holder in real property that imposes limitations or affirmative obligations designed to:

(A) retain or protect natural, scenic, or open-space values of real property or assure its availability for agricultural, forest, recreational, or open-space use;

(B) protect natural resources;

(C) maintain or enhance air or water quality; or

(D) preserve the historical, architectural, archeological, or cultural aspects of real property.

(2) "Holder" means:

(A) a governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(B) a charitable corporation, charitable association, or charitable trust created or empowered to:

(i) retain or protect the natural, scenic, or open-space values of real property;

(ii) assure the availability of real property for agricultural, forest, recreational, or open-space use;

(iii) protect natural resources;

(iv) maintain or enhance air or water quality; or

(v) preserve the historical, architectural, archeological, or cultural aspects of real property.

(3) "Third-party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust that is eligible to be a holder but is not a holder.

(4) "Servient estate" means the real property burdened by the conservation easement.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.002. CREATION, CONVEYANCES, ACCEPTANCES, AND DURATION. (a) Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

(b) A right or duty in favor of or against a holder and a right in favor of a person having a third-party right of enforcement does not arise under a conservation easement before its acceptance by the holder and the recordation of the acceptance.

(c) Except as provided by Section 183.003(b) of this code, a conservation easement is unlimited in duration unless the instrument creating it makes some other provision.

(d) An interest that exists in real property at the time a conservation easement is created is not impaired unless the owner of the interest is a party to the conservation easement or consents to it.

(e) A conservation easement must be created in writing, acknowledged and recorded in the deed records of the county in which the servient estate is located, and must include a legal description of the real property which constitutes the servient estate.

(f) If land that has been subject to a conservation easement is no longer subject to such easement, an additional tax is imposed on the land equal to the difference, if any, between the taxes imposed on the land for each of the five years preceding the year in which the easement terminates and the taxes that would have been imposed had the land not been subject to a conservation easement in each of those years, plus interest at an annual rate of seven percent calculated from the dates on which the differences would have become due.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.003. JUDICIAL ACTIONS. (a) An action affecting a conservation easement may be brought by:

(1) an owner of an interest in the real property burdened by the easement;

(2) a holder of the easement;

(3) a person having a third-party right of enforcement; or

(4) a person authorized by some other law.

(b) This chapter does not affect the power of a court to modify or terminate a conservation easement in accordance with the principles of law and equity.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.004. VALIDITY. A conservation easement is valid even though:

(1) it is not appurtenant to an interest in real property;

(2) it can be or has been assigned to another holder;

(3) it is not of a character that has been recognized traditionally at common law;

(4) it imposes a negative burden;

(5) it imposes affirmative obligations on the owner of an interest in the burdened property or on the holder;

(6) the benefit does not touch or concern real property; or

(7) there is no privity of estate or of contract.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.005. APPLICABILITY. (a) This chapter applies to any interest created on or after September 1, 1983, that complies with this chapter, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise.

(b) This chapter applies to any interest created before September 1, 1983, if it would have been enforceable had it been created on or after September 1, 1983, unless retroactive application contravenes the constitution or laws of this state or the United States.

(c) This chapter does not invalidate any interest, whether designated as a conservation or preservation easement or as a

covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

Added by Acts 1983, 68th Leg., p. 2438, ch. 434, Sec. 1, eff. Sept. 1, 1983.

Sec. 183.006. COUNTY FINANCING FOR ACQUISITION OF CONSERVATION EASEMENT. (a) In addition to other methods of financing, including the use of the county's general fund, a county may finance the acquisition of a conservation easement under this chapter in the same manner as permitted for that county under:

(1) Section 331.004, Local Government Code, for the acquisition or improvement of land, buildings, or historically significant objects for park purposes or for historic or prehistoric preservation purposes; or

(2) Section 271.045, Local Government Code, for land and rights-of-way.

(b) A conservation easement financed under this section:

(1) may not be acquired by eminent domain; and

(2) is not subject to Section 331.007, Local Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1239 (S.B. 1044), Sec. 1, eff. June 17, 2011.

TITLE 9. HERITAGE
CHAPTER 191. ANTIQUITIES CODE
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 191.001. TITLE. This chapter may be cited as the Antiquities Code of Texas.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.002. DECLARATION OF PUBLIC POLICY. It is the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archeological,

educational, or scientific interest, including but not limited to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, pre-history, history, natural history, government, or culture in, on, or under any of the land in the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.003. DEFINITIONS. In this chapter:

(1) "Committee" means the Texas Historical Commission.

(2) "Landmark" means a state archeological landmark.

(3) "State agency" means a department, commission, board, office, or other agency that is a part of state government and that is created by the constitution or a statute of this state. The term includes an institution of higher education as defined by Section 61.003, Texas Education Code.

(4) "Political subdivision" means a local governmental entity created and operating under the laws of this state, including a city, county, school district, or special district created under Article III, Section 52(b)(1) or (2), or Article XVI, Section 59, of the Texas Constitution.

Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2001, ch. 364, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 1, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 109, Sec. 18, eff. Aug. 30, 1995.

Sec. 191.004. CERTAIN RECORDS NOT PUBLIC INFORMATION. (a) Information specifying the location of any site or item declared to be a state archeological landmark under Subchapter D of this chapter is not public information.

(b) Information specifying the location or nature of an

activity covered by a permit or an application for a permit under this chapter is not public information.

(c) Information specifying details of a survey to locate state archeological landmarks under this chapter is not public information.

Added by Acts 1981, 67th Leg., p. 959, ch. 365, Sec. 1, eff. June 10, 1981.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 191.021. COMPLIANCE WITH OPEN MEETINGS ACT AND ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) Repealed by Acts 1995, 74th Leg., ch. 109, Sec. 29, eff. Aug. 30, 1995.

(b) If an institution of higher education notifies the committee in a timely manner (as established by the committee's rules) that it protests the proposed designation of a building or land under its control as a landmark, the matter becomes a contested case under the provisions of Sections 12 through 20 of the Administrative Procedure and Texas Register Act. In the conduct of proceedings under the Administrative Procedure and Texas Register Act, both the hearing officer in his or her recommendations to the committee and the committee in its determinations of findings of fact and conclusions of law shall consider, in addition to such other objective criteria as the committee may establish pursuant to Section 191.091 of this chapter:

(1) that the primary mission of institutions of higher education is the provision of educational services to the state's citizens;

(2) that the authority for expenditure of the portion of the state's resources allocated to institutions of higher education for construction and repair purposes is entrusted to the governing boards of institutions of higher education for the purpose of the furtherance of the primary mission of the respective institutions of higher education;

(3) whether the benefit to the state from landmark designation outweighs the potential inflexibility of use that may be a consequence of the designation; and

(4) whether the cost of remodeling and/or restoration that might be required under the permit procedures of the committee if the building were designated as a landmark may be so substantially

greater than remodeling under procedures established by law for the review of remodeling projects for higher education buildings not so designated as to impair the proper use of funds designated by the state for educational purposes at the institution.

(c) If an institution of higher education notifies the committee in a timely manner (as established by the committee's rules) that it protests the terms of a permit proposed to be granted to an institution of higher education under this chapter, the matter becomes a contested case under the provisions of Sections 12 through 20 of the Administrative Procedure and the Texas Register Act. The hearing officer in his or her recommendations to the committee and the committee in its determination of findings of fact and conclusions of law shall consider:

(1) that the primary mission of institutions of higher education is the provision of educational services to the state's citizens;

(2) that the authority for expenditure of the portion of the state's resources allocated to institutions of higher education for construction and repair purposes is entrusted to the governing boards of institutions of higher education for the purpose of the furtherance of the primary mission of the respective institutions of higher education;

(3) whether the legislature has provided extra funds that may be required to implement any proposed requirements;

(4) the effect of any proposed requirements on maintenance costs;

(5) the effect of any proposed requirements on energy costs; and

(6) the appropriateness of any proposed permit requirements to the uses to which a public building has been or will be dedicated by the governing board of the institution of higher education.

(d) Weighing the criteria set forth in Subsections (b) and (c) of this section against the criteria it adopts pursuant to Section 191.092 of this chapter and such criteria as it may adopt with regard to permit requirements, the committee shall designate a building or land under the control of an institution of higher education as a landmark or include a requirement in a permit only if the record before the committee establishes by clear and convincing evidence that such designation or inclusion would be in the public interest.

Added by Acts 1983, 68th Leg., p. 2003, ch. 364, Sec. 6, eff. Sept. 1, 1983. Amended by Acts 1995, 74th Leg., ch. 109, Sec. 29, eff. Aug. 30, 1995.
Amended by:
Acts 2009, 81st Leg., R.S., Ch. 1182 (H.B. 3632), Sec. 5, eff. June 19, 2009.

SUBCHAPTER C. POWERS AND DUTIES

Sec. 191.051. IN GENERAL. (a) The committee is the legal custodian of all items described in this chapter that have been recovered and retained by the State of Texas.

(b) The committee shall:

(1) maintain an inventory of the items recovered and retained by the State of Texas, showing the description and depository of them;

(2) determine the site of and designate landmarks and remove from the designation certain sites, as provided in Subchapter D of this chapter;

(3) contract or otherwise provide for discovery operations and scientific investigations under the provisions of Section 191.053 of this code;

(4) consider the requests for and issue the permits provided for in Section 191.054 of this code;

(5) prepare and make available to the general public and appropriate state agencies and political subdivisions information of consumer interest describing the functions of the committee and the procedures by which complaints are filed with and resolved by the committee; and

(6) protect and preserve the archeological and historical resources of Texas.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2002, ch. 364, Sec. 5, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 4, eff. Sept. 1, 1987.

Sec. 191.052. RULES. The committee may promulgate rules and require contract or permit conditions to reasonably effect the

purposes of this chapter.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.0525. NOTICE REQUIRED. (a) Before breaking ground at a project location on state or local public land, the person primarily responsible for the project or the person's agent shall notify the committee. The committee shall promptly determine whether:

(1) a historically significant archeological site is likely to be present at the project location;

(2) additional action, if any, is needed to protect the site; and

(3) an archeological survey is necessary.

(b) Except as provided by Subsection (c), the committee shall make a determination not later than the 30th day after the date the committee receives notice under Subsection (a). If the committee fails to respond in the 30-day period, the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(c) The committee shall make a determination not later than the 15th day after the date the committee receives notice under Subsection (a) for project locations regarding oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline projects. If the committee fails to respond in the 15-day period, the person may proceed with the project without further notice to the committee. If the committee determines that an archeological survey is necessary at the project location, the project may not commence until the archeological survey is completed.

(d) A project for a county, municipality, or an entity created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, requires advance project review only if the project affects a cumulative area larger than five acres or disturbs a cumulative area of more than 5,000 cubic yards, whichever measure is triggered first, or if the project is inside a designated historic

district or recorded archeological site.

(e) There exist categorical exclusions since many activities conducted on nonfederal public land have little, if any, chance to damage archeological sites, and therefore should not require notification under this section. The following are categorical exclusions at a minimum:

(1) water injection into existing oil and gas wells;

(2) upgrading of electrical transmission lines when there will be no new disturbance of the existing easement;

(3) seismic exploration activity when there is no ground penetration or disturbance;

(4) building and repairing fences that do not require construction or modification of associated roads, fire breaks, or previously disturbed ground;

(5) road maintenance that does not involve widening or lengthening the road;

(6) installation or replacement of meter taps;

(7) controlled burning of fields;

(8) animal grazing;

(9) plowing, if the techniques are similar to those used previously;

(10) installation of monuments and sign posts unless within the boundaries of designated historic districts;

(11) maintenance of existing trails;

(12) land sales and trades of land held by the permanent school fund and permanent university fund;

(13) permanent school fund and permanent university fund leases, easements, and permits, including mineral leases and pooling agreements, in which the lessee, grantee, or permittee is specifically required to comply with the provisions of this chapter;

(14) oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline project in an area where the project will cross state or local public roads, rivers, and streams, unless they contain a recorded archeological site or a designated state land tract in Texas' submerged lands;

(15) maintenance, operation, replacement, or minor modification of an existing oil, gas, or other mineral exploration, production, processing, marketing, refining, or transportation facility or pipeline; and

(16) any project for which a state permit application has been made prior to promulgation of rules under this section.

(f) This section does not apply to any state agency or political subdivision that has entered into a memorandum of understanding for coordination with the committee.

(g)(1) If, during the course of a project or class of projects that have complied with the notification requirements of this section, a person encounters an archeological site, the person shall abate activity on the project at the project location and shall promptly notify the committee. Within two business days of notification under this subsection, the committee shall determine whether:

(A) a historically significant archeological site is likely to be present in the project area;

(B) additional action, if any, is needed to protect the site; and

(C) an archeological investigation is necessary.

(2) If the committee fails to respond within two business days, the person may proceed without further notice to the committee.

(h) The notification required by this section does not apply to a response to a fire, spill, or other emergency associated with an existing facility located on state or local public lands if the emergency requires an immediate response.

(i) The committee by rule shall establish procedures to implement this section.

Added by Acts 1995, 74th Leg., ch. 109, Sec. 19, eff. Aug. 30, 1995. Amended by Acts 1997, 75th Leg., ch. 1070, Sec. 51, eff. Sept. 1, 1997.

Sec. 191.053. CONTRACT FOR DISCOVERY AND SCIENTIFIC INVESTIGATION. (a) The committee may contract with other state agencies or political subdivisions and with qualified private institutions, corporations, or individuals for the discovery and scientific investigation of sunken or abandoned ships or wrecks of the sea, or any part of the contents of them, or archeological deposits or treasure imbedded in the earth.

(b) The contract shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the contract; and

(3) provide for the termination of any right in the investigator or permittee under the contract on the violation of any of the terms of the contract.

(c) The executed contract shall be recorded by the person, firm, or corporation obtaining the contract in the office of the county clerk in the county or counties in which the operations are to be conducted prior to the commencement of the operation.

(d) Title to all objects recovered is retained by the State of Texas unless and until it is released by the committee.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 5, eff. Sept. 1, 1987.

Sec. 191.054. PERMIT FOR SURVEY AND DISCOVERY, EXCAVATION, RESTORATION, DEMOLITION, OR STUDY. (a) The committee may issue a permit to other state agencies or political subdivisions or to qualified private institutions, companies, or individuals for the survey and discovery, excavation, demolition, or restoration of, or the conduct of scientific or educational studies at, in, or on landmarks, or for the discovery of eligible landmarks on public land if it is the opinion of the committee that the permit is in the best interest of the State of Texas.

(b) Restoration shall be defined as any rehabilitation of a landmark excepting normal maintenance or alterations to nonpublic interior spaces.

(c) The permit shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the permit; and

(3) provide for the termination of any right in the investigator or permittee under the permit on the violation of any of the terms of the permit.

Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 6, eff.

Sept. 1, 1987.

Sec. 191.055. SUPERVISION. All scientific investigations or recovery operations conducted under the contract provisions in Section 191.053 of this code and all operations conducted under permits or contracts set out in Section 191.054 of this code must be carried out:

(1) under the general supervision of the committee;

(2) in accordance with reasonable rules adopted by the committee; and

(3) in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2002, ch. 364, Sec. 7, eff. Sept. 1, 1983.

Sec. 191.056. ACCEPTANCE OF GIFTS. The committee may accept gifts, grants, devises, or bequests of money, securities, or property to be used in the pursuance of its activities and the performance of its duties.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2006, ch. 364, Sec. 7, eff. Sept. 1, 1983.

Sec. 191.057. SURVEY, EXCAVATION, OR RESTORATION FOR PRIVATE PARTIES. The committee may survey, excavate, or restore antiquities for private parties under rules promulgated by the committee. All real and administrative costs incurred in the survey, excavation, or restoration shall be paid by the private party.

Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 7, eff. Sept. 1, 1987.

Sec. 191.058. CURATION OF ARTIFACTS. (a) As far as is consistent with the public policy of this chapter, the committee, on a majority vote, may arrange or contract with other state agencies or political subdivisions, and qualified private institutions, corporations, or individuals, for public display of artifacts and other items in its custody through permanent exhibits established in the locality or region in which the artifacts were discovered or recovered. The committee, on a majority vote, may also arrange or contract with these same persons and groups for portable or mobile displays.

(b) The committee is the legal custodian of the items described in this chapter and shall adopt appropriate rules, terms, and conditions to assure appropriate security, qualification of personnel, insurance, facilities for preservation, restoration, and display of the items loaned under the contracts.

(c) Arrangements for curation of artifacts, data, and other materials recovered under Texas Antiquities Committee permits are specified in the body of the permit. Should a state agency or political subdivision lack the facilities or for any reason be unable to curate or provide responsible storage for such artifacts, data, or other materials, the Texas Antiquities Committee will arrange for curation at a suitable institution. The Texas Antiquities Committee may by rule assess costs for the curation.

(d) The committee may contract with a qualified institution for the institution to serve as a repository for artifacts and other items in the custody of the committee. The Corpus Christi Museum of Science and History is the repository for marine artifacts. The committee may contract with other qualified institutions to serve as additional repositories for marine artifacts. The committee may authorize an archeological repository to loan artifacts and other items curated by the repository to a qualified institution for public display. The Corpus Christi Museum of Science and History:

(1) does not own the artifacts for which it serves as a repository; and

(2) shall make available for loan to a qualified institution for display the marine artifacts for which it serves as a repository.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 2008, ch. 364, Sec. 8,

eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 948, Sec. 8, eff. Sept. 1, 1987; Acts 1997, 75th Leg., ch. 797, Sec. 1, 2, eff. June 17, 1997.

Sec. 191.059. COMPLAINTS. (a) The committee shall keep an information file about each complaint filed with the committee.

(b) If a written complaint is filed with the committee, the committee, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint.

Added by Acts 1983, 68th Leg., p. 2009, ch. 364, Sec. 9, eff. Sept. 1, 1983.

SUBCHAPTER D. STATE ARCHEOLOGICAL LANDMARKS

Sec. 191.091. SHIPS, WRECKS OF THE SEA, AND TREASURE IMBEDDED IN EARTH. Sunken or abandoned pre-twentieth century ships and wrecks of the sea, and any part or the contents of them, and all treasure imbedded in the earth, located in, on, or under the surface of land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas, are declared to be state archeological landmarks and are eligible for designation.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 9, eff. Sept. 1, 1987.

Sec. 191.092. OTHER SITES, ARTIFACTS, OR ARTICLES. (a) Sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including those pertaining to prehistoric and historical American Indians or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archeological landmarks and are eligible for designation.

(b) For the purposes of this section, a structure or a building has historical interest if the structure or building:

(1) was the site of an event that has significance in the history of the United States or the State of Texas;

(2) was significantly associated with the life of a famous person;

(3) was significantly associated with an event that symbolizes an important principle or ideal;

(4) represents a distinctive architectural type and has value as an example of a period, style, or construction technique; or

(5) is important as part of the heritage of a religious organization, ethnic group, or local society.

(c) An individual or a private group that desires to nominate a building or site owned by a political subdivision as a state archeological landmark must give notice of the nomination at the individual's or group's own expense in a newspaper of general circulation published in the city, town, or county in which the building or site is located. If no newspaper of general circulation is published in the city, town, or county, the notice must be published in a newspaper of general circulation published in an adjoining or neighboring county that is circulated in the county of the applicant's residence. The notice must:

(1) be printed in 12-point boldface type;

(2) include the exact location of the building or site; and

(3) include the name of the group or individual nominating the building or site.

(d) An original copy of the notice and an affidavit of publication signed by the newspaper's publisher must be submitted to the commission with the application for nomination.

(e) The commission may not consider for designation as a state archeological landmark a building or site owned by a political subdivision unless the notice and affidavit required by Subsection (d) are attached to the application.

(f) Before the committee may designate a structure or building as a state archeological landmark, the structure or building must be listed on the National Register of Historic Places.

(g) The committee shall adopt rules establishing criteria for the designation of a structure or building as a state archeological

landmark.

(h) The committee shall consider any and all fiscal impact on local political subdivisions before any structure or building owned by a local political subdivision may be designated as a state archeological landmark.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 193, ch. 90, Sec. 1, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 10, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 109, Sec. 20, eff. Aug. 30, 1995.

Sec. 191.093. PREREQUISITES TO REMOVAL, ALTERING, DAMAGING, DESTROYING, SALVAGING, OR EXCAVATING CERTAIN LANDMARKS. Landmarks under Section 191.091 or 191.092 of this code are the sole property of the State of Texas and may not be removed, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 193, ch. 90, Sec. 2, eff. Aug. 31, 1981; Acts 1987, 70th Leg., ch. 948, Sec. 11, eff. Sept. 1, 1987.

Sec. 191.094. DESIGNATING A LANDMARK ON PRIVATE LAND. (a) Any site located on private land which is determined by majority vote of the committee to be of sufficient archeological, scientific, or historical significance to scientific study, interest, or public representation of the aboriginal or historical past of Texas may be designated a state archeological landmark by the committee.

(b) No site may be designated on private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located on the ground.

(c) On designation, the consent of the landowner shall be recorded in the deed records of the county in which the land is located.

Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.095. PERMIT FOR LANDMARK ON PRIVATE LAND. All sites or items of archeological, scientific, or historical interest located on private land in the State of Texas in areas designated as landmarks, as provided in Section 191.094 of this code, and landmarks under Section 191.092 of this code, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from the committee or in violation of the terms of the permit.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.096. MARKING LANDMARK ON PRIVATE LAND. Any site on private land which is designated a landmark shall be marked by at least one marker bearing the words "State Archeological Landmark".

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 12, eff. Sept. 1, 1987.

Sec. 191.097. REMOVING DESIGNATION AS LANDMARK. (a) Any landmark on public or private land may be determined by majority vote of the committee to be of no further historical, archeological, educational, or scientific value, or not of sufficient value to warrant its further classification as a landmark, and on this determination may be removed from the designation as a landmark.

(b) On removal of the designation on private land which was designated by instrument of record, the committee shall execute and record in the deed records of the county in which the site is located an instrument setting out the determination and releasing the site from the provisions of this chapter.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 13, eff. Sept. 1, 1987.

Sec. 191.098. NOTIFICATION OF ALTERATION OR DEMOLITION OF

POSSIBLE LANDMARK. (a) A state agency may not alter, renovate, or demolish a building possessed by the state that was constructed at least 50 years before the alteration, renovation, or demolition and that has not been designated a landmark by the committee, without notifying the committee of the proposed alteration, renovation, or demolition not later than the 60th day before the day on which the agency begins the alteration, renovation, or demolition.

(b) After receipt of the notice the committee may waive the waiting period; however, if the committee institutes proceedings to determine whether the building is a state archeological landmark under Section 191.092 of this code not later than the 60th day after the day on which the notice is received by the committee, the agency must obtain a permit from the committee before beginning an alteration, renovation, or demolition of the building during the time that the committee's proceedings are pending.

(c) Should the committee fail to provide a substantive response within 60 days to a request for a review of project plans, application for permit, draft report review, or other business required under the Antiquities Code, the applicant may proceed without further reference to the committee.

Added by Acts 1983, 68th Leg., p. 2009, ch. 364, Sec. 10, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 14, eff. Sept. 1, 1987.

SUBCHAPTER E. PROHIBITIONS

Sec. 191.131. CONTRACT OR PERMIT REQUIREMENT. (a) No person, firm, or corporation may conduct a salvage or recovery operation without first obtaining a contract.

(b) No person, firm, or corporation may conduct an operation on any landmark without first obtaining a permit and having the permit in his or its possession at the site of the operation, or conduct the operation in violation of the provisions of the permit.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.132. DAMAGE OR DESTRUCTION. (a) No person may intentionally and knowingly deface American Indian or aboriginal

paintings, hieroglyphics, or other marks or carvings on rock or elsewhere that pertain to early American Indian or aboriginal habitation of the country.

(b) A person who is not the owner shall not wilfully injure, disfigure, remove, or destroy a historical structure, monument, marker, medallion, or artifact without lawful authority.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.133. ENTRY WITHOUT CONSENT. No person who is not the owner, and does not have the consent of the owner, proprietor, lessee, or person in charge, may enter or attempt to enter on the enclosed land of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on, or under any private land within the State of Texas.

Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER F. ENFORCEMENT

Sec. 191.171. CRIMINAL PENALTY. (a) A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than $50 and not more than $1,000, by confinement in jail for not more than 30 days, or by both.

(b) Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.172. CIVIL ACTION BY ATTORNEY GENERAL. (a) In

addition to, and without limiting the other powers of the attorney general, and without altering or waiving any criminal penalty provided in this chapter, the attorney general may bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue for an action instituted by the attorney general lies either in Travis County or in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.173. CIVIL ACTION BY CITIZEN. (a) A citizen of the State of Texas may bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue of an action by a citizen lies in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 191.174. ASSISTANCE FROM STATE AGENCIES, POLITICAL SUBDIVISIONS, AND LAW ENFORCEMENT OFFICERS. (a) The chief administrative officers of all state agencies and political subdivisions are directed to cooperate and assist the committee and the attorney general in carrying out the intent of this chapter.

(b) All state and local law enforcement agencies and officers are directed to assist in enforcing the provisions and carrying out the intent of this chapter.

Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 948, Sec. 15, eff. Sept.

1, 1987.

TITLE 10. CAVES
CHAPTER 201. CAVERN PROTECTION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 201.001. POLICY. It is declared to be the public policy and in the public interest of the State of Texas to protect and preserve all caves on or under any of the land in the State of Texas, including tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.002. DEFINITIONS. In this chapter:

(1) "Cave" means any naturally occurring subterranean cavity, and includes or is synonymous with cavern, pit, pothole, well, sinkhole, and grotto.

(2) "Gate" means any structure, lock, door, or device located to limit or prohibit access or entry to any cave.

(3) "Speleothem" means a natural mineral formation or deposit occurring in a cave, and includes or is synonymous with stalagmites, stalactites, helictites, anthodites, gypsum flowers, needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, plettes, flowstone, or other similar crystalline mineral formations commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals and formations.

(4) "Owner" means a person who owns title to land on which a cave is located, including a person who owns title to a leasehold estate in the land.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

SUBCHAPTER B. PERMITS

Sec. 201.011. PERMIT REQUIRED. No person may excavate, remove, destroy, injure, alter in any significant manner, or deface any part

of a cave owned by the State of Texas, unless the person possesses a valid permit under Section 201.012.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.

Sec. 201.012. ISSUANCE OF PERMIT. The General Land Office may issue a permit under this subsection if the person seeking the permit furnishes the following information:

(1) a detailed statement giving the reasons and objectives for the excavation, removal, or alteration and the benefits expected to be obtained from the contemplated work;

(2) data and results of any completed excavation;

(3) the prior written permission from the state agency which manages the site of the proposed excavation;

(4) a sworn statement that he will carry the permit while exercising the privileges granted; and

(5) any other reasonable information which the General Land Office may prescribe.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.013. REVOCATION. The General Land Office may for good cause revoke any permit issued under Section 201.012 of this code.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.

Sec. 201.014. PENALTIES. A person who violates Section 201.011 is guilty of a Class A misdemeanor, unless the person has previously been convicted of violating that section, in which case the person is guilty of a state jail felony.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.
Reenacted and amended by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.002, eff. September 1, 2009.

SUBCHAPTER C. PROHIBITIONS

Sec. 201.041. VANDALISM. (a) A person may not, without express, prior, written permission of the owner, knowingly:

(1) break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, deface, mar, or harm the surfaces of any cave or any natural material in a cave, including speleothems;

(2) deface, mar, or harm in any manner the natural condition of any cave; or

(3) break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance to the cave may not be gained.

(b) A person who violates a provision of this section is guilty of a state jail felony, unless the person has previously been convicted of violating this section, in which case the person is guilty of a felony of the third degree.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:
Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 2, eff. September 1, 2007.
Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 1, eff. September 1, 2007.
Reenacted by Acts 2009, 81st Leg., R.S., Ch. 87 (S.B. 1969), Sec. 16.003, eff. September 1, 2009.

Sec. 201.042. SALE OF SPELEOTHEMS. (a) A person may not sell or offer for sale any speleothems in this state, or export them for sale outside the state, without written permission from the owner of the cave from which the speleothems were removed.

(b) A person who violates this section is guilty of a Class A misdemeanor, unless the person has previously been convicted of violating this section, in which case the person is guilty of a state jail felony.

Added by Acts 1979, 66th Leg., p. 2003, ch. 785, Sec. 5, eff. June 13, 1979.
Amended by:

Acts 2007, 80th Leg., R.S., Ch. 993 (S.B. 1524), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 1107 (H.B. 3502), Sec. 2, eff. September 1, 2007.

TITLE 11. MISCELLANEOUS USES OF NATURAL RESOURCES
CHAPTER 211. HAZARDOUS LIQUID SALT DOME STORAGE FACILITIES
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 211.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Hazardous liquid" means any liquid which is not defined as a solid or hazardous waste by Section 361.003, Health and Safety Code, and which is:

(A) petroleum or any petroleum or liquid natural gas product; or

(B) any hydrocarbon in a liquid state, other than liquified natural gas, that has been determined by the United States secretary of transportation to be a hazardous liquid.

(3) "Salt dome storage of hazardous liquids" means the storage of a hazardous liquid in any salt formation or bedded salt formation storage facility, but does not include a facility that has been defined by the federal Department of Transportation as part of an interstate pipeline facility and that is subject to federal minimum standards adopted under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

(4) "Salt dome storage facility" includes any new or existing salt formation or bedded salt formation storage cavern and

any equipment, facility, or building used or intended for use in the storage of a hazardous liquid in the salt formation cavern.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 8, eff. September 1, 2013.

Sec. 211.002. POWERS OF LOCAL GOVERNMENTS. (a) This chapter does not reduce, limit, or impair the authority provided by law to any municipality, except as provided by Subsection (b) of this section.

(b) A municipality or county may not adopt or enforce an ordinance or other regulation that establishes safety standards or practices applicable to hazardous liquid salt formation storage facilities that are subject to regulation by federal or state law.

(c) "Safety standards or practices" means any regulation of an activity or facility covered by this chapter or that is incompatible with the safety standards or practices enacted or adopted by federal or state government pursuant to 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:
Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 9, eff. September 1, 2013.

SUBCHAPTER B. REGULATION OF FACILITIES

Sec. 211.011. JURISDICTION. The commission has jurisdiction over all salt dome storage of hazardous liquids and over salt dome storage facilities used for the storage of hazardous liquids.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.012. RULES AND STANDARDS. (a) The commission by rule shall adopt safety standards and practices for the salt dome storage of hazardous liquids and the facilities used for that purpose. Safety standards and practices adopted by the commission for a

storage facility that is part of an intrastate pipeline facility, as defined by the federal Department of Transportation under 49 U.S.C. Section 60101 et seq. and its subsequent amendments or a succeeding law, must be compatible with federal minimum standards. The rules shall require:

(1) the installation and periodic testing of safety devices at a salt dome storage facility;

(2) the establishment of emergency notification procedures for the operator of a facility in the event of a release of a hazardous substance that poses a substantial risk to the public;

(3) fire prevention and response procedures;

(4) employee and third-party contractor safety training with respect to the operation of the facility; and

(5) other requirements that the commission finds necessary and reasonable for the safe construction, operation, and maintenance of salt dome storage facilities.

(b) The commission may grant exceptions to its rules or impose additional requirements in any permit or amended permit issued to a facility if the facility, as permitted, will not cause an unreasonable danger to the public.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.
Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1177 (S.B. 901), Sec. 10, eff. September 1, 2013.

Sec. 211.013. RECORDS AND REPORTS. (a) Each owner or operator of a hazardous liquid salt dome storage facility shall maintain records, make reports, and provide any information the commission may require with respect to the construction, operation, or maintenance of the facility. The operator of a hazardous liquid salt dome storage facility shall report or make available for inspection the results of any commission-required test of a safety device installed at the facility to the commission within 10 days after the day of the test.

(b) The commission by rule shall designate the records required to be maintained and the reports required to be filed by the owner or operator and shall provide forms for reports if necessary.

(c) The commission may require the owner or operator of a

hazardous liquid salt dome storage facility to prepare a safety procedural manual for the facility. The commission may require the owner or operator to file the manual with the commission for approval or to make the manual available for inspection by an employee or agent of the commission.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

Sec. 211.014. INSPECTIONS AND EXAMINATIONS. (a) The commission or its employee or designated agent may enter property on which a hazardous liquid salt dome storage facility is located or any other property relating to salt dome storage of a hazardous liquid and may inspect and examine the property and any records located on the property to the extent relevant to determine if a person is acting in compliance with this chapter and any rules adopted by the commission under this chapter.

(b) Before the commission or its employees or agents enter the premises of a storage facility with on-site personnel, proper credentials must be presented to the on-site person in charge of the property.

(c) An entry, examination, or inspection under this section must be made only at a reasonable time and in a reasonable manner.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Sept. 1, 1993.

SUBCHAPTER C. ENFORCEMENT

Sec. 211.031. CIVIL PENALTY. A person who violates this chapter or a rule adopted or order or permit issued under this chapter is subject to a civil penalty of not more than $25,000 for each act of violation and for each day of violation. The total amount of penalties that may be assessed under this section for a related series of violations may not exceed $500,000.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

Sec. 211.032. ENFORCEMENT BY COMMISSION AND ATTORNEY GENERAL. (a) If it appears that a person has been or is violating this chapter or a rule of the commission adopted under this chapter, the

commission may institute a civil suit in a district court for injunctive relief to restrain the person from continuing the violation or for the assessment and recovery of a civil penalty under Section 211.031 of this code, or for both the injunctive relief and the civil penalty.

(b) On application for injunctive relief and a finding that a person has violated or is violating this chapter or a rule of the commission under this chapter, the district court shall grant the injunctive relief that the facts warrant.

(c) At the request of the commission, the attorney general shall institute and conduct a suit under this section in the name of the state.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

Sec. 211.033. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty against a person who:

(1) violates this chapter or a rule adopted or order or permit issued under this chapter;

(2) intentionally or knowingly destroys or damages or attempts to destroy or damage a hazardous liquid salt dome storage facility; or

(3) intentionally or knowingly disables a safety device in a hazardous liquid salt dome storage facility, except to facilitate a repair; maintain, repair, or test the device; or conduct an activity reasonably necessary for the safe operation of the facility.

(b) The penalty may be in an amount not to exceed $25,000. Each day a violation occurs or continues constitutes a separate violation for the purpose of this section.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) A civil penalty may be assessed only after the person charged under this section has been given an opportunity for a public hearing.

(e) If a public hearing has been held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty that is warranted, incorporating, when appropriate, an order requiring that the penalty be paid.

(f) If appropriate, the commission shall consolidate the hearings with other proceedings.

(g) If a person charged under this section fails to take advantage of the opportunity for a public hearing, a civil penalty may be assessed by the commission after it has determined that a violation occurred and the amount of the penalty that is warranted.

(h) The commission shall then issue an order requiring the penalty to be paid.

(i) The notice of the commission's order given to the person under Chapter 2001, Government Code must include a statement of the right of the person to judicial review of the order.

(j) Not later than the 30th day after the date the commission's order is final as provided by Subchapter F, Chapter 2001, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until

all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) If the commission receives a copy of an affidavit under Subsection (k)(2) of this section, the commission may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the commission may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the commission:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if

the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for the deposit to the credit of the oil-field cleanup fund.

(r) All proceedings under this section are subject to Chapter 2001, Government Code.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.
Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(49), (53), (59), eff. Sept. 1, 1995.

Sec. 211.034. NOTICES OF NONCOMPLIANCE. In addition to other authority specifically granted to the commission under this chapter, the commission may enforce this chapter or any rule adopted or order or permit issued under this chapter as provided by Section 91.207 of this code.

Added by Acts 1993, 73rd Leg., ch. 949, Sec. 1, eff. Jan. 1, 1994.

TITLE 12. WETLANDS
CHAPTER 221. WETLAND MITIGATION
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 221.001. DEFINITIONS. In this chapter:

(1) "Buffer zone" means a strip of land adjoining a wetland mitigation bank to protect the wetland habitat and wildlife within the bank from the impact of an activity outside the zone. The term includes a strip of land composed primarily of water or a strip of land that includes a fence, wall, or screen of vegetation.

(2) "Eligible political subdivision" means:

(A) a county with a population of 3.3 million or more or a county adjacent to such a county; or

(B) a conservation and reclamation district:

(i) that is established under Section 59, Article XVI, Texas Constitution;

(ii) the boundaries of which are within a county that has a population of 3.3 million or more; and

(iii) that is authorized under other law to participate in a program under this chapter.

(3) "Federal requirement" means a requirement of the federal government contained in a statute, regulation, or guideline for an eligible mitigation bank program or a wetland regulation program.

(4) "Mitigation bank" means a parcel of land that has undergone or is proposed to undergo a physical change necessary to create or optimize the acreage or quality of wetland habitat on the parcel expressly to provide a mitigation credit to offset an adverse impact to wetland caused by an approved project located elsewhere.

(5) "Mitigation credit" means a unit of measured area that supports wetland habitat or wetland habitat value that did not exist at the mitigation bank site before the mitigation bank was developed.

(6) "Wetland" means land that:

(A) has a predominance of hydric soil;

(B) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and

(C) under normal circumstances does support a prevalence of that vegetation.

(7) "Wetland regulation program" means a program of the state, a state agency, or an eligible political subdivision under which the state, agency, or subdivision administers its own individual or general permit program regulating the use of wetland.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 669, Sec. 114, eff. Sept. 1, 2001.

Sec. 221.002. USE OF MONEY. A state agency or an eligible political subdivision may use any money to accomplish a purpose of this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.003. COST OF MOVING OR CHANGING FACILITY. If a state

agency, eligible political subdivision, or nonprofit corporation, in exercising a power under this chapter, makes it necessary to move, raise, lower, reroute, or change the grade of or alter the construction of a pipeline, highway, railroad, electric transmission or distribution line, or telephone or telegraph property or facility, the agency, subdivision, or corporation must bear the sole expense of the action.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER B. WETLAND MITIGATION BANKING AND CONTRACTS

Sec. 221.021. ACTIONS TO ESTABLISH OR MAINTAIN MITIGATION BANK. (a) With the approval of the General Land Office, a state agency or eligible political subdivision may take any necessary and reasonable action to comply with a federal requirement to establish or maintain a mitigation bank. An action under this section may include:

(1) authorizing or making a continuing study of wetland areas and wetland mitigation programs;

(2) consistent with federal requirements, engaging in a wetland mitigation program and adopting and enforcing permanent land use and control measures on land the agency or subdivision owns in a mitigation bank;

(3) consulting with, providing information to, and entering into an agreement with a federal agency to identify and publish information about wetland areas;

(4) cooperating with a federal or state agency in connection with a study or investigation regarding the adequacy of a local measure with respect to a federal or state wetland program;

(5) improving the long-range management or use of wetland or a wetland mitigation bank;

(6) purchasing, leasing, condemning, or otherwise acquiring property inside or outside the eligible political subdivision that is necessary for a wetland mitigation bank or buffer zone and, as necessary, improving the land or other property as a wetland mitigation bank, including any adjacent buffer zone, to comply with a federal requirement;

(7) requesting or receiving aid from a federal or state agency or an eligible political subdivision;

(8) purchasing, selling, or contracting to purchase or sell a mitigation credit in a mitigation bank;

(9) incurring a liability or borrowing money on terms approved by the governing body of the subdivision;

(10) acquiring, holding, using, selling, leasing, or disposing of real or personal property, including a license, patent, right, or interest, that is necessary, convenient, or useful for the full exercise of a power under this chapter;

(11) contracting with any operator to use or operate any part of a mitigation bank; and

(12) procuring any type of insurance and paying an insurance premium in an amount the governing body of the eligible political subdivision considers necessary or advisable.

(b) The power of eminent domain granted by this section does not enable a state agency or eligible political subdivision to acquire by condemnation an interest in land that is owned or used by a public utility. In this subsection, "public utility" has the meaning assigned by the Public Utility Regulatory Act of 1995 (Article 1446c-0, Vernon's Texas Civil Statutes).

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.022. OPTIONAL MITIGATION BANK PROVISIONS. A mitigation bank project may include a provision for:

(1) a park;

(2) recreation;

(3) a scenic area; or

(4) flood control.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.023. MITIGATION BANK CONTRACTS; CONTRACT PAYMENTS. (a) A state agency or eligible political subdivision may contract with another state agency or eligible political subdivision to pay jointly any part of the cost to acquire, design, construct, improve, or maintain a wetland mitigation bank or a buffer zone.

(b) Payment of the cost of a project or a payment required to

be made under a contract may be made out of bond proceeds, taxes, or any other money available for the payment.

(c) If a contract provides for payment over a term of years, an eligible political subdivision may impose a tax in an amount necessary to:

(1) create a sinking fund for the contract payments; and

(2) make the payments when due.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

SUBCHAPTER C. PROVISIONS FOR POLITICAL SUBDIVISIONS

Sec. 221.041. APPLICATION TO FEDERAL AGENCY. On behalf of an eligible political subdivision that proposes to administer its own individual or general wetland regulation program, the governor may apply to the appropriate federal agency for program approval.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.042. COMPLIANCE WITH FEDERAL PROGRAM. An eligible political subdivision authorized to implement a wetland mitigation program may comply with a program established by the federal government with respect to the implementation of a wetland regulation program or for the acquisition, ownership, or operation of a wetland mitigation bank.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.043. COUNTY APPROVAL OF POLITICAL SUBDIVISION PROGRAM. An eligible political subdivision may not institute a wetland regulation program unless the commissioners court of each county in which the eligible political subdivision lies approves the program after conducting a public hearing.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.044. RULES FOR WETLAND DELINEATION. (a) An eligible political subdivision authorized to implement a wetland mitigation program may adopt and compile reasonably necessary rules.

(b) An eligible political subdivision by rule may set standards for delineating land as wetland for purposes of:

(1) this chapter; or

(2) a federal requirement.

(c) A rule under Subsection (b) may be adopted after consultation with federal agencies, including the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the United States Army Corps of Engineers, and the Soil Conservation Service of the United States Department of Agriculture.

(d) A standard for delineating wetland must comply with federal requirements for delineating wetland.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.045. PERMIT. (a) An eligible political subdivision authorized to implement a wetland mitigation program may issue a permit that incorporates, and assures compliance with, an applicable:

(1) requirement of this chapter; or

(2) federal requirement.

(b) A permit may be terminated or modified for cause, including:

(1) violation of a permit condition;

(2) obtaining a permit by misrepresentation or not fully disclosing all relevant facts; or

(3) a change in a condition that requires temporarily or permanently reducing or eliminating the permitted activity.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.046. MITIGATION BANK FINANCING. (a) A mitigation project participant may issue a bond, note, or other obligation to acquire land for, to pay any part of the cost of, or to acquire,

construct, improve, operate, or maintain a wetland mitigation bank.

(b) The subdivision may issue a bond, note, or obligation:

(1) in one or more series; and

(2) payable from and secured by:

(A) a tax;

(B) an assessment;

(C) an impact fee;

(D) revenue;

(E) a grant or gift;

(F) a lease or contract; or

(G) a combination of resources listed in Paragraphs (A)-(F).

(c) In this section, "mitigation project participant" means an eligible political subdivision that seeks to:

(1) implement a project the unavoidable result of which would adversely affect wetland; and

(2) compensate for the loss of wetland acreage or wetland habitat value through participation in a mitigation bank.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.

Sec. 221.047. BOND REQUIREMENTS. (a) A bond issued under Section 221.046 is a negotiable instrument within the meaning and for purposes of the Business & Commerce Code.

(b) The bond may be:

(1) issued registrable as to principal or as to both principal and interest; or

(2) made redeemable before maturity.

(c) The bond may be:

(1) issued in the form, denominations, and manner and under the terms provided by the order or resolution authorizing the issuance of the bond; and

(2) sold in the manner, at the price, and under the terms provided by the order or resolution authorizing the issuance of the bond.

(d) The bond shall:

(1) be executed in accordance with the order or resolution authorizing the issuance of the bond; and

(2) bear interest at the rate provided by the order or resolution authorizing the issuance of the bond.

(e) The bond may bear interest and may be issued in accordance with:

(1) Chapters 1201, 1204, and 1371, Government Code; or

(2) Subchapters A-C, Chapter 1207, Government Code.

(f) The bond may be additionally secured by a:

(1) mortgage or deed of trust on real property that is related to the mitigation bank; or

(2) chattel mortgage, lien, or security interest on personal property appurtenant to that real property.

(g) The eligible political subdivision may authorize the execution of a trust indenture, mortgage, deed of trust, or other encumbrance to evidence the indebtedness.

(h) The eligible political subdivision may pledge to the payment of the bond any part of a grant, a donation, revenue, or income received or to be received from the United States or any other source.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 8.361, eff. Sept. 1, 2001.

Sec. 221.048. BOND PROCEEDS. If the use authorized by the order or resolution authorizing the issuance of a bond under Section 221.046, the bond proceeds may be used to:

(1) pay interest on the bond during or after the acquisition or construction of an improvement project financed by the bond issue;

(2) pay administrative and operation expenses;

(3) create a reserve fund for payment of the principal of and interest on the bonds; or

(4) create any other fund.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 24.01(a), eff. Sept. 1, 1997.